

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF ) CR-05-00215-EJD  
AMERICA, )  
 ) DECEMBER 19, 2011  
PLAINTIFF, )  
 ) VOLUME 10  
V. )  
 ) PAGES 1 - 202  
ERIC AARON LIGHTER, )  
 )  
DEFENDANT. )  
----- )

THE PROCEEDINGS WERE HELD BEFORE  
THE HONORABLE UNITED STATES DISTRICT  
JUDGE EDWARD J. DAVILA

A P P E A R A N C E S:

FOR THE PLAINTIFF: U.S. DEPARTMENT OF JUSTICE  
BY: CHARLES A. O'REILLY  
KATHERINE WONG  
P.O.BOX 972  
WASHINGTON, D.C. 20044

FOR THE DEFENDANT: CAREY & CAREY  
BY: JERRY Y. FONG  
706 COWPER STREET  
PALO ALTO, CALIFORNIA 94301

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

A P P E A R A N C E S: (CONT'D)

ALSO PRESENT:

INTERNAL REVENUE SERVICE  
BY: CHARLES TONNA  
450 GOLDEN GATE AVENUE  
6TH FLOOR  
SAN FRANCISCO, CALIFORNIA  
94102

DEPARTMENT OF THE TREASURY  
BY: WILLIAM LEE  
KENNETH BONANO  
450 GOLDEN GATE AVENUE  
7TH FLOOR, SUITE 7-2506  
SAN FRANCISCO, CALIFORNIA  
94102

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FOR THE GOVERNMENT:

**ERIC LIGHTER**

DIRECT EXAM BY MR. FONG

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GOVERNMENT'S

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SAN JOSE, CALIFORNIA

DECEMBER 19, 2011

P R O C E E D I N G S

(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE  
HELD IN THE PRESENCE OF THE JURY:)

THE COURT: WE'RE BACK ON THE RECORD IN  
THE LIGHTER MATTER. OUR JURY AND ALTERNATES ARE  
PRESENT. ALL COUNSEL AND THE DEFENDANT IS PRESENT.  
BEFORE WE BEGIN, I WANT TO ADDRESS OUR  
SCHEDULE. I THINK THAT MIGHT BE OF SOME INTEREST  
TO YOU.

WERE BEHIND SCHEDULE AND I APOLOGIZE FOR  
THAT.

MY SENSE IS THAT YOU WILL HAVE THIS CASE  
TOMORROW AND THE EVIDENCE WILL CONCLUDE TOMORROW  
AND YOU WILL BEGIN YOUR DELIBERATIONS TOMORROW.

THAT'S THE BEST INFORMATION THAT I HAVE  
THIS MORNING FOR YOU.

SO WE'RE GOING TO PROCEED THIS MORNING.

I EXPECT THAT WE'LL START AT 8:30  
TOMORROW, UNLESS THERE'S -- 8:00 A.M. START IS  
POSSIBLE. I DON'T KNOW HOW INCONVENIENT THAT IS TO  
YOU.

PERHAPS YOU CAN DISCUSS THAT AMONGST

08:37:15 1 YOURSELVES. THAT'S ANOTHER POSSIBILITY TO CAPTURE  
08:37:17 2 SOME TIME AS WELL.

08:37:19 3 BUT THAT'S THE BEST ESTIMATE OF THE TIME  
08:37:21 4 AS OF THIS MOMENT.

08:37:24 5 SO LET'S BEGIN. AGAIN, MR. FONG, IF YOU  
08:37:28 6 COULD HAVE YOUR CLIENT.

08:37:29 7 MR. FONG: THANK YOU, YOUR HONOR.

08:37:30 8 THE COURT: MR. LIGHTER, IF YOU WOULD  
08:37:34 9 RESUME THE STAND, PLEASE.

08:37:36 10 **ERIC AARON LIGHTER,**  
08:37:36 11 BEING RECALLED AS A WITNESS ON BEHALF OF HIMSELF,  
08:37:36 12 HAVING BEEN PREVIOUSLY SWORN, WAS FURTHER EXAMINED  
08:37:55 13 AND TESTIFIED AS FOLLOWS:

08:37:55 14 THE COURT: I'LL REMIND YOU, SIR, THAT  
08:37:57 15 YOU'RE STILL UNDER OATH. PLEASE ADJUST THE CHAIR  
08:38:00 16 AND THE MICROPHONE IF YOU WOULD.

08:38:03 17 MR. FONG.

08:38:04 18 MR. FONG: THANK YOU, YOUR HONOR.

08:38:06 19 **DIRECT EXAMINATION (RESUMED)**

08:38:08 20 BY MR. FONG:

08:38:08 21 Q GOOD MORNING, MR. LIGHTER.

08:38:09 22 A GOOD MORNING, MR. FONG.

08:38:11 23 Q I JUST WANTED TO START OUT THIS MORNING ABOUT  
08:38:13 24 FOLLOWING UP ON SOME OF THE TESTIMONY THAT YOU GAVE  
08:38:15 25 LAST FRIDAY REGARDING YOUR RELATIONSHIP WITH SAM

08:38:19 1 FUNG.

08:38:19 2 I'M GOING TO SHOW -- I'M GOING TO PUBLISH  
08:38:25 3 A DOCUMENT THAT IS ALREADY IN EVIDENCE AS  
08:38:29 4 GOVERNMENT'S EXHIBIT 42.

08:38:30 5 AND I'LL HAND YOU A COPY. YOU CAN FOLLOW  
08:38:41 6 ALONG ON THE DOCUMENT OR GO ALONG THE SCREEN WITH  
08:38:44 7 EVERYBODY ELSE IN THE COURTROOM.

08:38:45 8 FIRST OF ALL, SIR, DO YOU SEE THAT  
08:38:47 9 DOCUMENT IN FRONT OF YOU?

08:38:48 10 A YES.

08:38:49 11 Q AND THANK YOU FOR SPEAKING UP. I APPRECIATE  
08:38:51 12 IT.

08:38:53 13 AND DO YOU RECOGNIZE THAT DOCUMENT?

08:38:54 14 A YES, I DO.

08:38:55 15 Q OKAY. AND WHAT IS YOUR UNDERSTANDING OF WHAT  
08:38:58 16 THAT DOCUMENT IS?

08:38:59 17 A IT'S A FOLLOW-UP OR A SUPPLEMENT TO THE FUNG  
08:39:05 18 OMNIBUS RETURN.

08:39:07 19 Q OKAY. AND DID YOU HAVE ANY PART IN THE --  
08:39:13 20 WELL, FIRST OF ALL, DID YOU SIGN THIS PARTICULAR  
08:39:15 21 DOCUMENT?

08:39:15 22 A NO. NO.

08:39:17 23 Q AND DID YOU HAVE ANY PART IN THE PREPARATION  
08:39:20 24 OF THIS DOCUMENT?

08:39:21 25 A I DRAFTED PART OF IT.

08:39:24 1 Q OKAY. AND WHAT IS YOUR -- WHAT WAS THE  
08:39:26 2 PURPOSE OF YOUR PARTICIPATING IN THE DRAFTING OF  
08:39:30 3 THIS DOCUMENT?

08:39:30 4 A WELL, I CANCELLED MY COMMITMENT TO HELP FUNG  
08:39:46 5 WITH HIS TAXES, BUT IT SEEMED REASONABLE TO GIVE AN  
08:39:53 6 UPDATE ON THE OMNIBUS RETURN BECAUSE THAT WAS  
08:39:58 7 ALREADY SUBMITTED TO THE I.R.S. AND HE WAS GOING TO  
08:40:00 8 CONFIRM IT AND THAT WAS ABOUT IT.

08:40:06 9 Q AND DO YOU REMEMBER APPROXIMATELY WHEN YOU  
08:40:08 10 PREPARED YOUR PART OF EXHIBIT 42?

08:40:10 11 A I'D HAVE TO LOOK AT THE DATE.

08:40:15 12 Q ALL RIGHT. IF YOU COULD LOOK AT THE DOCUMENT,  
08:40:17 13 PERHAPS, THAT WOULD REFRESH YOUR RECOLLECTION.

08:40:19 14 A IT'S DATED AUGUST 27TH, 2003. SO BEFORE THEN.  
08:40:23 15 PROBABLY A MONTH BEFORE THEN. I WAS IN HAWAII.

08:40:25 16 Q ALL RIGHT. NOW, BEFORE TODAY, YOU HAVE HAD A  
08:40:33 17 CHANCE TO READ EXHIBIT 42 IN ITS ENTIRETY; RIGHT?

08:40:37 18 A YES.

08:40:37 19 Q NOW, ARE THERE WRITINGS IN THERE THAT YOU DID  
08:40:41 20 NOT PREPARE?

08:40:41 21 A CORRECT.

08:40:42 22 Q OKAY. I'M JUST GOING TO DIRECT YOUR ATTENTION  
08:40:49 23 TO -- OH, DO YOU KNOW WHO PREPARED THOSE PARTS OR  
08:40:56 24 BESIDES YOU, DO YOU KNOW WHO ELSE PREPARED ANY PART  
08:40:59 25 OF EXHIBIT 42?



08:41:00 1 A NO. SAM HAD TAX TYPE FRIENDS THAT I DIDN'T  
08:41:06 2 KNOW.

08:41:08 3 MS. WONG: OBJECTION, HEARSAY.

08:41:10 4 THE COURT: THE LAST PORTION OF THE  
08:41:12 5 ANSWER IS STRICKEN. "SAM HAD TAX FRIENDS THAT I  
08:41:17 6 DIDN'T KNOW," THAT PORTION IS STRICKEN.

08:41:19 7 MR. FONG: THAT'S FINE.

08:41:20 8 THE COURT: THAT PORTION IS STRICKEN,  
08:41:21 9 LADIES AND GENTLEMEN.

08:41:22 10 THE WITNESS: MAY I RESTATE?

08:41:23 11 THE COURT: YOU CAN ASK ANOTHER QUESTION  
08:41:25 12 IF YOU WISH.

08:41:26 13 MR. FONG: YES.

08:41:27 14 Q SO BESIDES YOURSELF, DO YOU KNOW WHO PREPARED  
08:41:31 15 ANY PART OF -- WHO ELSE PREPARED ANY PART OF  
08:41:35 16 EXHIBIT 42?

08:41:35 17 MS. WONG: OBJECTION, ASKED AND ANSWERED.  
08:41:37 18 LACK OF PERSONAL KNOWLEDGE.

08:41:41 19 THE COURT: SUSTAINED.

08:41:42 20 MR. FONG: ALL RIGHT.

08:41:43 21 Q DID YOU GIVE THIS DOCUMENT TO MR. FUNG  
08:41:49 22 BEFORE -- WELL, LET ME ASK YOU THIS, DID YOU SEND  
08:41:52 23 IN THIS DOCUMENT TO CID IN WASHINGTON?

08:41:54 24 A NO.

08:41:54 25 Q OKAY. DID YOU GIVE WHATEVER PART OF THE

08:41:58 1 DOCUMENT THAT YOU PREPARED TO MR. FUNG?

08:42:03 2 A YES.

08:42:03 3 Q AND DID YOU DO SO BEFORE THE DATE THAT THE  
08:42:07 4 AUGUST 2003 DATE THAT IS SET FORTH IN THE DOCUMENT?

08:42:11 5 MS. WONG: OBJECTION, ASKED AND ANSWERED.

08:42:13 6 THE COURT: OVERRULED. YOU CAN ANSWER,  
08:42:16 7 SIR.

08:42:16 8 THE WITNESS: YES.

08:42:17 9 BY MR. FONG:

08:42:17 10 Q ALL RIGHT. NOW, DIRECTING YOUR ATTENTION TO  
08:42:23 11 PAGE 2 OF THE DOCUMENT OF EXHIBIT 42, IT'S THE  
08:42:30 12 THIRD FULL PARAGRAPH.

08:42:31 13 DO YOU SEE THAT?

08:42:32 14 A YES.

08:42:33 15 Q OKAY. "THAT IS, FUNG HEREBY CONFESSES TO  
08:42:38 16 CONSPIRACY TO COMMIT THE SAME ACTS AS COMPLAINED OF  
08:42:40 17 IN THE ATTACHMENTS TO THE INSTANT OMNIBUS TAX  
08:42:43 18 RETURN FILED ON MAY 1ST, 2002, WHICH ACTS CAUSED NO  
08:42:48 19 CONVICTIONS FOR WHATEVER REASONS AND ADDITIONALLY  
08:42:51 20 CONFIRMS THE FELONY CONFESSIONS MADE WITHIN AND  
08:42:54 21 PART OF THE ATTACHMENT TO THE INSTANT OMNIBUS  
08:42:59 22 RETURNS PREVIOUSLY FILED."

08:43:02 23 DO YOU SEE THAT PARAGRAPH, SIR?

08:43:04 24 A YES.

08:43:04 25 Q AND OKAY. DO YOU KNOW WHO PREPARED THAT

08:43:07 1 PARTICULAR PARAGRAPH?

08:43:07 2 A NOT SPECIFICALLY BUT THAT'S MY LANGUAGE.

08:43:10 3 Q ALL RIGHT. DIRECTING YOUR ATTENTION TO THE  
08:43:19 4 LAST PARAGRAPH ON PAGE 2 OF EXHIBIT 42 IT STARTS  
08:43:22 5 WITH "NOW, FUNG, TAXPAYER HEREIN HEREBY DECLARES  
08:43:27 6 THAT, FUNG HEREBY FURTHER REPUDIATES THE THEORY AND  
08:43:31 7 PRACTICE OF NATIONAL TRUST SERVICES MORE  
08:43:34 8 SPECIFICALLY ALL OF THE TEACHING AND LEARNING HOW  
08:43:36 9 TO PREPARE COMPLEX TRUST REPORTING FORM 1041'S."

08:43:41 10 DO YOU SEE THAT?

08:43:42 11 A YES.

08:43:42 12 Q OKAY. NOW, DO YOU KNOW -- DO YOU REMEMBER WHO  
08:43:45 13 PREPARED THAT PARTICULAR SENTENCE?

08:43:46 14 A THAT'S -- I WROTE THAT ONE SENTENCE. THE REST  
08:43:51 15 OF THE PARAGRAPH IS NOT MINE.

08:43:53 16 Q ALL RIGHT. DIRECTING YOUR ATTENTION TO PAGE 6  
08:44:14 17 OF EXHIBIT 42. DO YOU SEE THAT, SIR?

08:44:17 18 A YES.

08:44:17 19 Q OKAY. I'M GOING TO DIRECT YOUR ATTENTION TO  
08:44:19 20 THE FIRST FULL PARAGRAPH OF EXHIBIT 40 OF -- PAGE 6  
08:44:23 21 OF EXHIBIT 42.

08:44:25 22 IT READS, "FURTHER, FUNG HEREBY FURTHER  
08:44:28 23 COMMITS TO DO HIS BEST TO CONTINUE TO CONVERT  
08:44:31 24 NATIONAL TRUST SERVICES CLIENTS AND TRUSTS OVER TO  
08:44:33 25 CORPORATE TAX FILINGS AND OTHERWISE CONVENTIONAL

08:44:36 1 PAYMENT OF ALL THEREBY DUE TAXES AS REASONABLY  
08:44:39 2 PERCEIVED BY THE INTERNAL REVENUE SERVICE HEREBY  
08:44:43 3 FURTHER FULFILLING FUNG'S COMMITMENT TO FULL  
08:44:46 4 COOPERATION AND REASONABLE AGREEMENT THE INTERNAL  
08:44:49 5 REVENUE SERVICE."

08:44:51 6 DO YOU SEE THAT PARAGRAPH, SIR?

08:44:54 7 A YES, YES.

08:44:54 8 Q AND DO YOU KNOW WHO PREPARED THE LANGUAGE OF  
08:44:56 9 THAT PARAGRAPH?

08:44:57 10 A IT LOOKS LIKE A MERGER OF I -- SOME OF IT IS  
08:45:08 11 MINE. I CAN'T TELL YOU WHICH LANGUAGE IS.

08:45:11 12 Q OKAY. BUT YOU DO RECOGNIZE SOME OF THE  
08:45:17 13 LANGUAGE AS YOURS?

08:45:18 14 A YES.

08:45:18 15 Q AND WHAT ABOUT THE TERM "CONVENTIONAL PAYMENT  
08:45:22 16 OF ALL THEREBY DUE TAXES AS REASONABLY PERCEIVED BY  
08:45:26 17 THE INTERNAL REVENUE SERVICE," IS THAT CLAUSE  
08:45:31 18 SOMETHING THAT YOU WERE FAMILIAR WITH?

08:45:32 19 A YES.

08:45:32 20 Q AND IS THAT CLAUSE SOMETHING THAT YOU HAD USED  
08:45:35 21 PREVIOUSLY?

08:45:35 22 A YES.

08:45:35 23 Q SO IT WOULD BE FAIR TO SAY THAT AT LEAST EVEN  
08:45:42 24 THOUGH YOU DON'T REMEMBER EXACTLY WHICH PART OF THE  
08:45:44 25 FIRST FULL PARAGRAPH OF PAGE 6 OF EXHIBIT 42 THAT

08:45:47 1 YOU HAD ACTUALLY PREPARED AS OPPOSED TO SOMEBODY  
08:45:51 2 ELSE, THAT LANGUAGE THEN WE JUST TALKED ABOUT WAS  
08:45:54 3 LANGUAGE THAT YOU REMEMBERED PREPARING?

08:45:58 4 A YES.

08:45:59 5 Q NOW, I WANT TO MOVE ON THEN TO ANOTHER TOPIC.

08:46:12 6 FIRST OF ALL, AFTER YOUR HELPING MR. FUNG  
08:46:14 7 PREPARE EXHIBIT 42, DID YOU HAVE -- WHAT WAS -- DID  
08:46:17 8 YOU HAVE ANY SUBSEQUENT DEALINGS WITH MR. FUNG?

08:46:20 9 A YES. HE INTRODUCED ME TO THREE POTENTIAL  
08:46:27 10 PARTNERS IN THE HOTEL AND THE SECURITIES OFFERING.

08:46:36 11 Q AND DID YOU TELL -- WERE YOU AWARE -- DID YOU  
08:46:39 12 TELL MR. FUNG ABOUT YOUR ATTEMPTS TO DEVELOP THE  
08:46:47 13 HOTEL IN HAWAII?

08:46:49 14 A YES, EXTENSIVE DOCUMENTATION WAS IN THE  
08:46:54 15 EXHIBITS IN THE OMNIBUS RETURN.

08:46:56 16 Q NOW, WHAT WAS YOUR PURPOSE IN TALKING TO  
08:47:00 17 MR. FUNG ABOUT THE HOTEL DEVELOPMENT RIGHTS IN  
08:47:02 18 HAWAII?

08:47:02 19 A TO FIND EITHER A PARTNER OR SOMEONE TO TAKE  
08:47:12 20 OVER AND BE THE DEVELOPER, INCLUDING EVEN SAM FUNG.

08:47:15 21 Q ALL RIGHT. NOW, WHY DID YOU THINK THAT  
08:47:20 22 MR. FUNG COULD HELP YOU WITH THAT?

08:47:21 23 A TWO REASONS. HE WAS A CCIM, AS I DISCUSSED  
08:47:29 24 EARLIER, AND HE KNEW -- THREE REASONS -- AND HE  
08:47:33 25 KNEW HAWAII PRETTY WELL; AND, THREE, HE EXPLAINED

08:47:38 1 TO ME OR TO ME THE KIND OF TRANSACTIONS THAT HE HAD  
08:47:42 2 CLOSED AND THERE WAS A SIGNIFICANT NUMBER OF  
08:47:44 3 COMMERCIAL TRANSACTIONS AND DEALINGS WITH  
08:47:52 4 DEVELOPERS.

08:47:53 5 Q YOU SAID A LITTLE BIT EARLIER THAT SUBSEQUENT  
08:47:55 6 TO YOUR HELPING MR. FUNG PREPARE EXHIBIT 42, HE  
08:47:59 7 REFERRED SOME CLIENTS TO YOU, SOME OF HIS CLIENTS  
08:48:02 8 TO YOU. IS THAT CORRECT?

08:48:04 9 A IN REAL ESTATE, YES.

08:48:07 10 Q OKAY. NOW, WHO WAS THE FIRST -- WELL, FIRST  
08:48:12 11 OF ALL, ARE THESE THREE CLIENTS DR. BROCK,  
08:48:17 12 DR. MORRIS BROCK, JEAN-PAUL BOURDIER, AND DR. IRWIN  
08:48:20 13 GOOTNICK?

08:48:20 14 A YES.

08:48:20 15 Q OKAY. SO AMONG THE THREE, WHO WAS THE FIRST  
08:48:25 16 CLIENT OF MR. FUNG'S THAT HE INTRODUCED TO YOU?

08:48:28 17 A MORRIS BROCK.

08:48:30 18 Q AND DO YOU REMEMBER APPROXIMATELY WHEN  
08:48:33 19 MR. FUNG FIRST INTRODUCED MR. BROCK OR DR. BROCK, I  
08:48:37 20 SHOULD SAY, TO YOU?

08:48:38 21 A I MET WITH DR. BROCK NOT THAT LONG AFTER HE  
08:48:49 22 FIRST CALLED ME, WHICH WAS MARCH 28TH, 2003.

08:48:53 23 Q NOW, YOU SAID MARCH 28TH, 2003. WHY DOES THAT  
08:48:57 24 DATE STICK OUT FOR YOU?

08:48:58 25 A THAT'S WHEN SAM FUNG, I, MYSELF, AND DR. HANEY

08:49:04 1 AND DR. BROCK ALL MET IN -- AND THERE WAS THE BROCK  
08:49:09 2 RESIDENCE.

08:49:10 3 Q AND THAT WAS IN THE SAN FRANCISCO BAY AREA; IS  
08:49:13 4 THAT CORRECT?

08:49:13 5 A CORRECT.

08:49:17 6 Q AND DO YOU HAPPEN TO KNOW WHAT CITY THAT WAS  
08:49:20 7 IN?

08:49:28 8 A SAN SOMETHING.

08:49:29 9 Q THAT NARROWS IT DOWN. SANTA ROSA MAYBE?

08:49:33 10 A SANTA ROSA.

08:49:34 11 Q THANK YOU.

08:49:39 12 FIRST OF ALL, YOU FLEW IN FROM HAWAII FOR  
08:49:42 13 THIS MEETING, I GATHER?

08:49:43 14 A I DID.

08:49:44 15 Q AND WHERE DID YOU STAY -- OH, HOW LONG WERE  
08:49:46 16 YOU ACTUALLY HERE FOR THAT PARTICULAR TRIP AND  
08:49:49 17 MEETING WITH DRS. BROCK AND HANEY?

08:49:52 18 A TWO OR THREE DAYS. I STAYED AT THE VILLAGE  
08:49:57 19 CREEK HOTEL WHICH IS PARTLY OWNED BY DR. BROCK.

08:50:00 20 Q AND WAS THAT NEAR THE DR. BROCK AND  
08:50:07 21 DR. HANEY'S HOME?

08:50:08 22 A WELL, NOT IN HAWAII TERMS BUT IN CALIFORNIA  
08:50:10 23 TERMS, YES.

08:50:11 24 Q WHAT WAS IT, 10 MINUTES BY CAR OR 15 MINUTES?

08:50:14 25 A YES.

08:50:14 1 Q OKAY. NOW, WHEN YOU CAME HERE, HAD YOU HAD  
08:50:23 2 CONVERSATIONS WITH DR. MORRIS BROCK BEFOREHAND?

08:50:26 3 A I DID.

08:50:27 4 Q AND DID YOU HAVE CONVERSATIONS WITH SAM FUNG  
08:50:29 5 REGARDING THIS PARTICULAR MEETING WITH DR. MORRIS  
08:50:32 6 BROCK?

08:50:32 7 A I DID.

08:50:35 8 Q AND DID YOU HAVE ANY SUCH TELEPHONE  
08:50:37 9 CONVERSATIONS WITH DR. CATHERINE HANEY?

08:50:39 10 A NO.

08:50:39 11 Q OKAY. NOW, WHEN YOU CAME TO THE SAN FRANCISCO  
08:50:48 12 BAY AREA FOR THIS MEETING, WHAT WAS YOUR INTENTION  
08:50:51 13 IN TERMS OF WHAT YOU WERE GOING TO DO?

08:50:56 14 A WELL, BY THE TIME I GOT TO CALIFORNIA, I KNEW  
08:50:59 15 THAT DR. BROCK WAS AN N.T.S. CLIENT.

08:51:04 16 Q N.T.S. CLIENT OF WHOM?

08:51:06 17 A SAM FUNG. SO I WANTED TO MAKE SURE THEY  
08:51:10 18 LEARNED THE TRANSACTION THAT WE DID, THAT THE  
08:51:12 19 I.R.S. WAS PAID AND HAD THEIR LIEN AND WOULDN'T  
08:51:18 20 INTERFERE WITH THE DEVELOPMENT OF THE HOTEL.

08:51:20 21 Q OKAY. AND, MR. LIGHTER, I NOTICE THAT YOUR  
08:51:26 22 VOICE IS DROPPING A LITTLE BIT?

08:51:27 23 A SORRY.

08:51:28 24 Q THAT'S OKAY. IF YOU COULD HAVE THE MICROPHONE  
08:51:30 25 CLOSER TO YOU. THAT WOULD BE GREAT. I APPRECIATE



08:51:33 1 IT.

08:51:43 2 NOW, DID YOU HAVE ANY EXPECTATION THAT  
08:51:45 3 DR. BROCK WOULD BE INTERESTED IN ANY OF THE HAWAII  
08:51:49 4 HOTEL PROJECTS THAT YOU WERE INVOLVED IN?

08:51:53 5 A I DID.

08:51:53 6 Q AND WHAT WAS THE BASIS OF YOUR EXPECTATION?

08:51:57 7 A I ASKED HIM IF HE WAS INTERESTED AND DESIROUS  
08:52:05 8 OF BUILDING A HIGH RISE NEAR THE BEACH.

08:52:14 9 Q NOW, BEFORE THAT, BEFORE YOU CAME TO SAN  
08:52:17 10 FRANCISCO TO MEET WITH DR. BROCK AND DR. HANEY AND  
08:52:19 11 SAM FUNG, DID YOU -- BEFORE THAT HAD YOU HAD ANY  
08:52:23 12 INFORMATION OR BELIEF AS TO WHAT DR. BROCK WAS --  
08:52:28 13 WHAT HIS INTERESTS WERE IN TERMS OF INVESTMENTS AND  
08:52:34 14 WHATNOT?

08:52:34 15 A NO.

08:52:38 16 Q AND WHAT ABOUT HIS EXPERIENCE AS AN INVESTOR?

08:52:41 17 A WELL, HE TOLD ME HE OWNED PART OF A BRAND NEW  
08:52:48 18 HOTEL AND THAT'S WHERE I WOULD BE STAYING AND  
08:52:50 19 INDEED THAT'S WHERE I STAYED.

08:52:51 20 Q ALL RIGHT. AND WHEN YOU FIRST ARRIVED IN THE  
08:52:55 21 BAY AREA, WHAT ELSE DID YOU KNOW ABOUT WHAT KIND OF  
08:53:00 22 INVESTMENTS DR. BROCK HAD?

08:53:01 23 A I DIDN'T.

08:53:07 24 Q OKAY. THEN YOU WENT TO THIS HOTEL NEAR THE  
08:53:11 25 BROCKS' HOUSE AND AT SOME POINT I GATHER YOU WENT

08:53:15 1 TO DR. BROCK'S HOME, RIGHT?

08:53:20 2 A I DID.

08:53:20 3 Q AND DID YOU GO THERE BY YOURSELF?

08:53:23 4 A NO, WITH MR. FUNG.

08:53:24 5 Q AND HOW IS IT THAT YOU AND MR. FUNG WENT TO  
08:53:30 6 THE BROCKS' HOME TOGETHER?

08:53:33 7 A HE CAME TO THE VILLAGE CREEK HOTEL, I THINK  
08:53:36 8 THAT'S THE NAME, AND WE TOOK ONE CAR.

08:53:38 9 Q ALL RIGHT. DO YOU REMEMBER WHOSE CAR IT WAS,  
08:53:40 10 YOURS OR MR. FUNG'S?

08:53:41 11 A I THINK IT WAS MINE BECAUSE I HAD A LOT OF  
08:53:52 12 DOCUMENTS TO GIVE BROCK REGARDING THE HOTEL AND HIS  
08:53:59 13 CAR WAS --

08:54:00 14 Q AND NOW, BEFORE YOU AND SAM FUNG DROVE OVER TO  
08:54:05 15 BROCKS' HOME, HAD YOU HAD ANY CONTACT WITH  
08:54:07 16 DR. BROCK OR DR. HANEY?

08:54:09 17 A I HAD DINNER WITH THEM THE NIGHT BEFORE.

08:54:14 18 Q AND DURING THAT DINNER -- WELL, FIRST OF ALL,  
08:54:16 19 WAS SAM FUNG THERE?

08:54:17 20 A NO.

08:54:17 21 Q AND DURING THAT DINNER, DID YOU DISCUSS ANY  
08:54:20 22 KIND OF BUSINESS AT ALL?

08:54:21 23 A WE COULD HAVE. I DON'T RECALL SPECIFICALLY.

08:54:28 24 Q THEN YOU AND SAM FUNG DROVE TO THE BROCKS'  
08:54:32 25 HOME. WAS THAT THE SAME DAY THAT YOU AND THE

08:54:37 1 BROCKS ENDED UP SIGN SOMETHING DOCUMENTS?

08:54:39 2 A SOME PRELIMINARY DOCUMENTS, YES.

08:54:41 3 Q AND THAT WOULD HAVE BEEN?

08:54:42 4 A THE 28TH OF MARCH.

08:54:44 5 Q OF 2003?

08:54:46 6 A MARCH 28TH, 2003.

08:54:49 7 Q ALL RIGHT. SO MARCH 28TH, 2003 WOULD HAVE  
08:54:52 8 BEEN THE DAY YOU WENT OVER THEIR HOUSE?

08:54:54 9 A CORRECT.

08:54:54 10 Q AND HOW LONG DID THIS MEETING TAKE AT THE  
08:54:57 11 BROCKS' HOME?

08:55:00 12 A APPROXIMATELY FIVE HOURS.

08:55:06 13 Q AND DURING THE COURSE OF THE FIVE HOURS, WHAT  
08:55:08 14 WAS DONE? WHAT HAPPENED?

08:55:10 15 A WELL, I HAD TO GIVE A FIRSTHAND DISSERTATION  
08:55:20 16 ON THE HOTEL AND DISCLOSE EVERYTHING I KNEW ABOUT  
08:55:22 17 THE HOTEL AND TRIED TO GO OVER AS MANY OF THE  
08:55:25 18 DOCUMENTS THAT I HAD BROUGHT EXTENSIVELY.

08:55:29 19 Q AND WHEN YOU SAY, "THE HOTEL," CAN YOU TELL US  
08:55:31 20 SPECIFICALLY -- I'M SORRY, WE TALKED OVER EACH  
08:55:33 21 OTHER, WHICH IS BAD FOR MADAM COURT REPORTER. I'LL  
08:55:38 22 START AGAIN.

08:55:39 23 WHEN YOU SAID YOU TOLD HIM ABOUT THE  
08:55:41 24 HOTEL, WHICH HOTEL WERE YOU REFERRING TO  
08:55:43 25 SPECIFICALLY?

08:55:43 1 A HAWAIIN COLONY HOTEL CORPORATION WAIKIKI.

08:55:48 2 Q OKAY. SO YOU TOLD HIM ABOUT THE HOTEL. AND  
08:55:51 3 WHAT DID YOU SAY ABOUT THE HOTEL?

08:55:53 4 A THAT THE INTEREST OF HCHC CHIEFLY COMPRISED OF  
08:56:04 5 DEVELOPMENT RIGHTS TO BUILD A HIGH RISE WITH  
08:56:07 6 REVERSION UNTIL THE YEAR 2015 AND THE NATURE OF THE  
08:56:13 7 OPPORTUNITY TO BUILD A -- BECAUSE OF THE ZONING,  
08:56:19 8 THE HEIGHT LIMIT, POTENTIAL FOR THE MASS TRANSIT TO  
08:56:24 9 GO THROUGH AND EVEN SERVICE OF MILITARY BECAUSE  
08:56:29 10 ACROSS THE STREET WAS A MAIN MILITARY HOTEL AND ONE  
08:56:33 11 OF THE MAIN MILITARY HOTELS IN THE UNITED STATES.

08:56:39 12 Q NOW, DID DR. MORRIS BROCK ASK YOU ANY  
08:56:45 13 QUESTIONS ABOUT YOUR HOTEL PROJECT?

08:56:47 14 A VERY MANY.

08:56:48 15 Q OKAY. AND DID YOU COME AWAY WITH ANY BELIEF  
08:56:55 16 AS TO WHETHER OR NOT DR. MORRIS BROCK WAS  
08:56:58 17 INTERESTED IN INVESTING IN THE PROJECT?

08:57:01 18 A YES.

08:57:01 19 Q OKAY. AND, NOW, DID THEN THE FOUR OF YOU TALK  
08:57:09 20 ABOUT SORT OF HOW -- IF SOMEBODY WAS INTERESTED IN  
08:57:14 21 INVESTING IN THIS HOTEL PROJECT IN HAWAII, HOW THAT  
08:57:17 22 WOULD BE DONE?

08:57:17 23 A WE GOT INTO THE DETAILS, OH, BUT THE OVERVIEW  
08:57:20 24 WAS TO GIVE HCHC, THE HAWAIIN COLONY HOTEL  
08:57:28 25 CORPORATION, AND SAFELY GIVE HCHC ENOUGH ASSETS SO

08:57:31 1 IT COULD BORROW \$3 TO \$5 MILLION TO CONSOLIDATE THE  
08:57:42 2 INTEREST IN THE PROJECT OR TO CREDIBLY SWITCH THE  
08:57:54 3 YET-TO-BE DRAFTED SECURITIES OFFERING.

08:57:57 4 Q SO WHAT DO YOU MEAN BY "YET-TO-BE DRAFTED  
08:58:01 5 SECURITIES OFFERING"? WHAT ARE YOU REFERRING TO?

08:58:04 6 A WELL, IN NOVEMBER OF 2004 A SECURITIES  
08:58:09 7 OFFERING WAS EVENTUALLY FILED WITH THE S.E.C. TO  
08:58:12 8 FUND THE CONSOLIDATION AND DEVELOPMENT EFFORTS OF  
08:58:16 9 THE HAWAIIN COLONY HOTEL CORPORATION AMONG OTHER  
08:58:17 10 ITEMS.

08:58:19 11 Q AND DID YOU HAVE ANYTHING TO DO WITH THAT  
08:58:21 12 SECURITIES OFFERING?

08:58:21 13 A I WROTE IT.

08:58:23 14 Q OKAY. SO YOU WERE BEHIND -- YOU WERE THE  
08:58:26 15 PERSON BEHIND IT, RIGHT?

08:58:27 16 A I AND DEAN ROBIN WROTE IT. HE'S A SECURITIES  
08:58:34 17 EXPERT.

08:58:34 18 Q ALL RIGHT. OKAY. BUT IT WAS DONE -- IT WAS  
08:58:37 19 YOUR INITIATIVE?

08:58:38 20 A YES.

08:58:39 21 Q NOW, DID YOU MENTION -- DID YOU TELL THE  
08:58:46 22 BROCKS ABOUT THIS FUTURE SECURITIES OFFERING?

08:58:49 23 A YES.

08:58:49 24 Q NOW, DURING THESE MEETINGS WITH THE BROCKS,  
08:58:56 25 YOU KNOW, THE FOUR OR FIVE HOURS, WAS THERE ANY

08:58:58 1  
08:59:01 2  
08:59:01 3  
08:59:06 4  
08:59:07 5  
08:59:10 6  
08:59:14 7  
08:59:16 8  
08:59:17 9  
08:59:21 10  
08:59:25 11  
08:59:26 12  
08:59:31 13  
08:59:33 14  
08:59:34 15  
08:59:37 16  
08:59:41 17  
08:59:45 18  
08:59:47 19  
08:59:49 20  
08:59:53 21  
08:59:56 22  
08:59:57 23  
09:00:01 24  
09:00:02 25

DISCUSSION ABOUT DR. BROCK AND DR. HANEY'S TAX  
SITUATION?

A YES, THEY SAID THEY OWED APPROXIMATELY  
\$50,000.

Q NOW, AT THAT POINT IN THE MEETING WHEN THEY  
SAID THEY OWED APPROXIMATELY \$50,000 -- I GATHER  
\$50,000 IN TAXES, RIGHT?

A IN TAXES DUE.

Q TAXES DUE. NOW, HAD YOU -- AT THAT POINT HAD  
YOU SEEN ANY DOCUMENTS REGARDING THEIR TAX  
SITUATION?

A NO. EVENTUALLY THEY BROUGHT OUT THEIR RECORDS  
THAT I LOOKED AT FOR ABOUT FIVE MINUTES AND THEY  
GAVE THEIR RECORDS TO SAM FUNG.

Q OKAY. SO AT THAT POINT THAT THEY TOLD YOU  
THAT, LOOK, WE BELIEVE WE HAVE ABOUT \$50,000 OF  
TAX, BACK TAXES DUE, YOU HAD NOT SEEN ANY SOURCE  
DOCUMENT; IS THAT CORRECT?

MS. WONG: OBJECTION, ASKED AND ANSWERED.

THE COURT: YOU CAN ANSWER THE QUESTION  
IF YOU HAVE SEEN ANY SOURCE DOCUMENTS.

THE WITNESS: I DID NOT REVIEW SOURCE  
DOCUMENTS OTHER THAN THE FIVE-MINUTE CURSORY SCAN.  
BY MR. FONG:

Q ALL RIGHT.

09:00:02 1 A AND I'M NOT POSITIVE -- AND THOSE DID NOT  
09:00:04 2 INCLUDE ANY RECEIPTS OR INVOICES OR TYPICAL SOURCE  
09:00:11 3 DOCUMENTS THAT I WOULD NORMALLY ASK FOR.

09:00:14 4 Q NOW, AT THE TIME -- WHEN YOU LEFT THAT  
09:00:17 5 MEETING, DID YOU HAVE IN YOUR MIND A GOOD IDEA AS  
09:00:21 6 TO THE NATURE OR EXTENT OF ANY I.R.S. PROBLEMS THAT  
09:00:26 7 DR. BROCK OR DR. HANEY MIGHT HAVE?

09:00:29 8 A NO, AND I DID NOT KNOW THEY RECEIVED THE AUDIT  
09:00:33 9 NOTICE OR ANYTHING LIKE THAT.

09:00:34 10 Q ALL RIGHT. OKAY. WAS THERE SUBSEQUENT -- AT  
09:00:43 11 THAT MEETING, DID YOU DRAFT ANY DOCUMENTS?

09:00:45 12 A I DID.

09:00:46 13 Q AND WHAT DID YOU DRAFT OR PREPARE?

09:00:58 14 A THERE ARE FOUR MAIN DOCUMENTS.

09:00:59 15 Q OKAY. TO THE BEST OF YOUR ABILITY, IF YOU  
09:01:04 16 COULD GO OVER TO THE BEST OF YOUR RECOLLECTION WHAT  
09:01:06 17 THOSE FOUR MAIN DOCUMENTS ARE?

09:01:08 18 A THERE'S THE BILL OF SALE.

09:01:11 19 Q OKAY.

09:01:13 20 A AN ASSIGNMENT, A PROMISSORY NOTE, AND A  
09:01:16 21 CLARIFICATION.

09:01:17 22 Q WERE ALL FOUR DOCUMENTS DRAFTED ON THAT SAME  
09:01:20 23 DAY OR PREPARED ON THAT SAME DAY?

09:01:24 24 A YES, WITH A CLARIFICATION IT WAS DRAFTED BACK  
09:01:27 25 IN -- AFTER I LEFT THE BROCKS, THE SAME DAY BUT

09:01:30 1 AFTER I LEFT THE BROCKS.

09:01:31 2 Q OKAY. SO THE THREE DOCUMENTS THAT YOU DID  
09:01:35 3 PREPARE WHILE YOU WERE AT DR. BROCK'S HOME WERE THE  
09:01:38 4 BILL OF SALE, THE ASSIGNMENT, AND A PROMISSORY  
09:01:44 5 NOTE?

09:01:44 6 A CORRECT.

09:01:44 7 Q SO TELL US -- THE BILL OF SALE, FIRST OF ALL,  
09:01:48 8 THAT'S -- IS THAT -- THAT'S A DOCUMENT THAT  
09:01:58 9 DR. HANEY TESTIFIED TO EARLIER IN THIS TRIAL; IS  
09:02:00 10 THAT CORRECT?

09:02:00 11 A YES.

09:02:01 12 Q I'M GOING TO SHOW YOU A DOCUMENT THAT HAS BEEN  
09:02:14 13 PUBLISHED -- I'M SORRY -- ADMITTED INTO EVIDENCE AS  
09:02:17 14 GOVERNMENT'S EXHIBIT 192.

09:02:45 15 I'LL GIVE YOU A COPY. FIRST OF ALL, DO  
09:02:47 16 YOU SEE THE FIRST PAGE OF EXHIBIT 192 IN THE  
09:02:50 17 DOCUMENT IN FRONT OF YOU ON THE SCREEN?

09:02:52 18 A I DO.

09:02:53 19 Q AND IS THIS THE BILL OF SALE THAT YOU  
09:02:56 20 MENTIONED A LITTLE BIT EARLIER?

09:02:57 21 A IT IS.

09:03:14 22 Q AND DID YOU PREPARE THIS DOCUMENT?

09:03:16 23 A I DID, WITH INPUT FROM THE BROCKS.

09:03:18 24 Q OKAY. AND WHAT DID YOU UNDERSTAND THIS  
09:03:20 25 DOCUMENT IS SUPPOSED TO DO, BILL OF SALE, THAT'S



09:03:23 1 GOVERNMENT'S EXHIBIT 192?

09:03:25 2 A WELL, SUBJECT TO CERTAIN THINGS HAVEN'T  
09:03:34 3 HAPPENED YET, THE IDEA WAS TO TAKE THE BROCKS'  
09:03:46 4 TRUST THAT THEY HELD ASSETS SO THE LIABILITIES,  
09:03:54 5 INCLUDING TAX LIABILITIES, AND TRANSFER THEM, THE  
09:03:57 6 OWNERSHIP CERTIFICATES IT'S CALLED BENEFICIAL  
09:04:01 7 INTEREST CERTIFICATES, IT'S LIKE STOCK BUT FOR  
09:04:05 8 TRUSTS, AND TRANSFER THEM TO HCHC, AGAIN, SUBJECT  
09:04:12 9 TO THE BROCKS RECEIVING 100 PERCENT LIENS IN THEIR  
09:04:26 10 FAVOR, OF COURSE, THAT WOULD BE JUNIOR TO THE  
09:04:33 11 PARAMOUNT LIENS TO THE I.R.S. BY THE TIME THIS LIEN  
09:04:37 12 CLOSED BECAUSE I WAS GOING TO FILE AN OMNIBUS  
09:04:40 13 RETURN.

09:04:40 14 Q SO YOU MENTIONED -- THIS IS A STARTING POINT.  
09:04:43 15 THIS IS A WAY -- THIS DOCUMENT, YOU UNDERSTOOD THIS  
09:04:45 16 DOCUMENT TO TRANSFER FROM THE -- FROM DR. BROCK AND  
09:04:49 17 DR. HANEY THEIR TRUST ASSETS TO HCHC, THE COMPANY  
09:04:53 18 THAT YOU CONTROLLED AT THE TIME; IS THAT CORRECT?

09:04:56 19 A SUBJECT TO ALL OF THESE THINGS, YES.

09:04:58 20 Q OKAY. BUT THAT WAS THE FIRST STEP?

09:05:00 21 A FIRST STEP.

09:05:01 22 Q ALL RIGHT. OKAY. NOW, AT THE TIME YOU  
09:05:08 23 DRAFTED THIS DOCUMENT, DO YOU KNOW WHAT KIND OF  
09:05:10 24 ASSETS DR. BROCK AND DR. HANEY HAD IN THEIR TRUST?

09:05:15 25 A IT CAME LATER ON IN THE MEETING HE WROTE IT

09:05:17 1 OUT A LIST OF A FINANCIAL STATEMENT.

09:05:23 2 Q NOW, I'M GOING TO DIRECT YOUR ATTENTION TO THE  
09:05:26 3 FIRST, THE FIRST NUMBERED PARAGRAPH OF PAGE 1 OF  
09:05:33 4 EXHIBIT 192. IT READS: "SAID TRUSTS ARE  
09:05:37 5 ENCUMBERED WITH NON-RECOURSE LIENS IN FAVOR OF THE  
09:05:40 6 DESIGNATED CORPORATION WHICH GRANTOR'S ARE  
09:05:43 7 EXECUTIVE OFFICERS OF. UNTIL SAID LIENS ARE  
09:05:46 8 SATISFIED."

09:05:48 9 FIRST OF ALL, WHO WERE THE GRANTORS IN  
09:05:50 10 THIS DOCUMENT?

09:05:51 11 A THE BROCKS.

09:05:52 12 Q OKAY. THAT WOULD BE DR. MORRIS BROCK AND  
09:05:57 13 DR. CATHERINE HANEY?

09:05:57 14 A CORRECT.

09:05:57 15 Q NOW, WHAT DID YOU UNDERSTAND PARAGRAPH 1 WAS  
09:06:04 16 GOING TO TRY TO ACCOMPLISH?

09:06:11 17 A WE WERE GOING TO HAVE THE ATTORNEYS CREATE  
09:06:14 18 LIENS ON EITHER THE PERSONAL OR THE REAL PROPERTY  
09:06:16 19 SO THAT THE, SO THAT TO SECURE THE PROMISSORY NOTE  
09:06:24 20 DUE FROM HCHC.

09:06:26 21 Q OKAY. SO YOU MENTIONED PROMISSORY NOTE. HOW  
09:06:29 22 DOES THE PROMISSORY NOTE FIT INTO THIS TRANSACTION?

09:06:32 23 A WELL, MORRIS AND CATHERINE BROCK WERE SELLING  
09:06:40 24 THEIR ASSETS, THEIR TRUST ASSETS, ACTUALLY THEIR  
09:06:47 25 TRUSTS, NOT THEIR ASSETS, THE TRUST TO HCHC. HCHC

09:06:52 1 WAS GIVING OR GAVE THE BROCKS A PROMISSORY NOTE FOR  
09:06:55 2 2.285 MILLION SECURED BY A LIEN ONCOMING, NOT YET  
09:07:00 3 DRAFTED BY ATTORNEYS, LIENS ON ALL OF THE ASSETS OF  
09:07:04 4 THE TRUSTS.

09:07:06 5 Q ALL RIGHT. SO THE -- SO IS IT FAIR, JUST LIKE  
09:07:10 6 I CAN SUM IT UP SO THAT I UNDERSTAND IT, THE IDEA  
09:07:14 7 WAS THAT --

09:07:15 8 MS. WONG: OBJECTION, ASKED AND ANSWERED.

09:07:22 9 THE COURT: SUSTAINED. SO YOU CAN ASK  
09:07:28 10 ANOTHER QUESTION.

09:07:29 11 MR. FONG: THANK YOU, YOUR HONOR.

09:07:30 12 Q NOW, YOU SAID THERE WAS A PROMISSORY NOTE FOR  
09:07:34 13 \$2.285 MILLION; IS THAT CORRECT?

09:07:36 14 A I BELIEVE THAT'S THE FIGURE.

09:07:37 15 Q AND THEN THE PROMISSORY NOTE WOULD BE SECURE  
09:07:39 16 BY WHAT?

09:07:39 17 A LET ME THINK. IT WOULD BE SECURED BY THE  
09:08:05 18 ASSETS OF THE TRUST.

09:08:07 19 Q THE VERY SAME ASSETS THAT THE BROCKS, BY  
09:08:10 20 THIS -- BY THE BILL OF SALE WERE SELLING TO HCHC;  
09:08:14 21 RIGHT?

09:08:14 22 A CORRECT.

09:08:14 23 Q NOW, HAD YOU SEEN THESE TYPE OF TRANSACTIONS  
09:08:19 24 BEFORE WHERE SOMEBODY SELLS SOME ASSETS TO  
09:08:22 25 SOMEBODY, THE SELLER SELLS ASSETS TO BUYER. THE

09:08:29 1 BUYER GETS -- EXCUSE ME. THE BUYER WOULD GET BACK  
09:08:32 2 SOME KIND OF SECURITY INTEREST IN THE ASSETS THAT  
09:08:34 3 THE BUYER JUST ACQUIRED TO SECURE WHAT THE BUYER  
09:08:37 4 OWES TO THE SELLER?

09:08:39 5 MS. WONG: OBJECTION. RELEVANCE.

09:08:42 6 THE COURT: OVERRULED. YOU CAN ANSWER  
09:08:44 7 THE QUESTION.

09:08:44 8 THE WITNESS: IT'S EXTREMELY COMMON LIKE  
09:08:46 9 A PURCHASE MONEY MORTGAGE OR A DEED OF TRUST, IT'S  
09:08:50 10 THE SAME CONCEPT THAT I WAS TRYING TO CONDUCT HERE.  
09:08:54 11 BY MR. FONG:

09:08:54 12 Q NOW, YOU MENTIONED THE TERM "PURCHASE MONEY  
09:08:57 13 MORTGAGE." WHAT IS YOUR UNDERSTANDING OF WHAT IS A  
09:09:00 14 PURCHASE MONEY MORTGAGE?

09:09:05 15 A LET'S SAY I BUY YOUR HOUSE FOR \$500,000 AND I  
09:09:15 16 PUT \$100,000 DOWN. I OWE YOU \$400,000.

09:09:15 17 Q MR. LIGHTER, YOU MAY HAVE TO START OVER. TRY  
09:09:18 18 IT AGAIN IF YOU DON'T MIND.

09:09:19 19 A LET'S SAY I BUY YOUR HOUSE FOR \$500,000. I  
09:09:26 20 PUT \$100,000 DOWN PAYMENT, AND THEN I OWE YOU  
09:09:30 21 \$400,000. SO I'M THE OWNER OF THE HOUSE NOW, BUT I  
09:09:37 22 PUT A MORTGAGE OR A TRUSTEE IN THE AMOUNT OF  
09:09:41 23 \$400,000 PAYABLE TO YOU.

09:09:42 24 Q THE SELLER?

09:09:43 25 A THE SELLER.

Q AND THAT'S YOUR UNDERSTANDING OF WHAT A  
PURCHASE MONEY MORTGAGE IS?

A CORRECT.

Q OKAY. AND YOU BELIEVED THAT WHAT YOU WERE --  
WHAT THE TRANSACTION THAT WE HAVE BEEN TALKING  
ABOUT, THE BILL OF SALE AND THE PROMISSORY NOTE AND  
THE LIENS WERE KIND OF THE EQUIVALENT OF A PURCHASE  
MONEY MORTGAGE?

A YES, THE DIFFERENCE IS THAT THERE IS PERSONAL  
AND REAL PROPERTY SO THE ATTORNEYS WILL HAVE TO  
SORT THAT OUT.

Q ALL RIGHT. THAT BRINGS UP ANOTHER QUESTION,  
WAS THIS -- FIRST OF ALL, THIS BILL OF SALE WAS  
SIGNED BY THE BROCKS AND YOURSELF AND SAM FUNG; IS  
THAT TRUE?

A YES.

Q NOW, IF THAT'S A SIGNED DOCUMENT, DID YOU --  
WAS IT YOUR INTENTION THAT THIS BILL OF SALE WOULD  
BE THE FINAL DOCUMENT IN THIS TRANSACTION?

A NO, I WANTED TO -- I JUST WANTED TO HAVE  
ENOUGH STANDING TO FILE AN OMNIBUS RETURN TO  
ENFORCE THE I.R.S. LIEN TO GATHER THE ASSETS SO IT  
COULD CLEAN UP ANY N.T.S. TYPE PROBLEMS WITH THE  
I.R.S. BEFORE I GOT INTO BED AND DID BUSINESS WITH  
THESE PEOPLE. I WANTED TO CLEAN THEM UP.

Q ALL RIGHT. NOW, DIRECTING YOUR ATTENTION AGAIN TO THE FIRST PAGE OF EXHIBIT 192. DO YOU SEE IT SAYS THAT THERE SHALL BE THREE PARTY CHECKS FOR ALL DISBURSEMENTS OF THE FUNDS OF THE GUARANTEE WITH ONE SIGNATORY IRREVOCABLY CHOSEN BY THE GRANTOR.

FIRST OF ALL, THIS WORD "GRANTEE IN THIS DOCUMENT THE BILL OF SALE, WHAT IS YOUR UNDERSTANDING, WHO DOES THAT REFER TO?

A THE GRANTEE IS THE HAWAIIN HCHC, THE HAWAIIN COLONY HOTEL CORPORATION.

Q OKAY. SO THE GRANTEE IS THE BUYER IN ESSENCE?

A THE BUYER.

Q OKAY. WHAT IS YOUR UNDERSTANDING OF WHY PARAGRAPH 2 WAS THERE? AND WHY WOULD THERE BE -- AND, OF COURSE, THE GRANTOR WOULD BE DRS. BROCK AND HANEY; RIGHT?

A CORRECT.

Q OKAY. NOW, WHY WOULD HCHC'S CHECKING ACCOUNT, WHY WOULD THERE BE -- WHY WOULD THE BROCKS HAVE CONTROL OVER THE SIGNATOR OF THAT CHECKING ACCOUNT? WHAT WAS THE PURPOSE?

A TO GIVE BROCK CONTROL OVER ALL FUNDS, IN OTHER WORDS, MY CHECKBOOK.

I'M GIVING BROCK 50 PERCENT OF MY ASSETS,

09:12:16 1 CONTROL OF THE CHECKBOOK ON HIS ORAL PROMISE TO  
09:12:25 2 BUILD A HIGH RISE. IT WAS NOT A GREAT DEAL FOR ME  
09:12:29 3 IN HINDSIGHT.

09:12:29 4 Q SO YOU SAID THAT YOU WERE GIVING 50 PERCENT OF  
09:12:32 5 YOUR WHAT?

09:12:33 6 A OF THE HOTEL AND ASSETS.

09:12:34 7 Q BUT THAT PART OF THE TRANSACTION IS NOT PART  
09:12:38 8 OF THE BILL OF SALE; RIGHT?

09:12:40 9 A THAT'S THE ASSIGNMENT.

09:12:41 10 Q OKAY. SO THAT'S THE DOCUMENT LATER?

09:12:43 11 A LATER.

09:12:43 12 Q OKAY. BUT I MEAN, THE SAME DAY BUT THAT'S A  
09:12:46 13 DOCUMENT THAT WE HAVE NOT LOOKED AT YET, RIGHT?

09:12:48 14 A YES.

09:12:49 15 Q OKAY. AND PARAGRAPH 4 IT READS "GRANTEE."  
09:13:01 16 AGAIN, THAT'S HCHC, RIGHT?

09:13:01 17 A YES.

09:13:01 18 Q AND "ASSUMES ALL LIABILITIES OF SAID TRUSTS  
09:13:06 19 INCLUDING ALL ACCRUED AND CURRENT TAXES, WHICH TAX  
09:13:09 20 LIABILITY MAY BE OVER \$50,000."

09:13:11 21 OKAY. NOW WHAT DOES THAT MEAN? WHAT IS  
09:13:15 22 YOUR UNDERSTANDING OF WHAT THAT PARAGRAPH 4 MEANT?

09:13:19 23 A WELL, HCHC WAS BUYING THE TRUST SO IT SHOULD  
09:13:29 24 ALSO ASSUME LIABILITIES. THAT'S THE RESPONSIBLE  
09:13:32 25 THING TO DO.

09:13:32 1 Q NOW, AT THE TIME THAT YOU AGREED TO SIGN  
09:13:36 2 EXHIBIT 192, INCLUDING THE HAVING HCHC YOUR COMPANY  
09:13:41 3 ASSUME ALL LIABILITIES FOR DR. BROCK AND  
09:13:45 4 DR. HANEY'S TRUSTS, INCLUDING THEIR TAX LIABILITY,  
09:13:51 5 YOU DID NOT KNOW THE TRUE EXTENT OR NATURE OF THEIR  
09:13:56 6 TAX LIABILITY?

09:13:57 7 A ABSOLUTELY.

09:14:00 8 MS. WONG: OBJECTION. LEADING.

09:14:03 9 THE COURT: THE QUESTION IS LEADING.

09:14:05 10 DO YOU WANT TO ASK IT IN A DIFFERENT  
09:14:07 11 MANNER OR FORM?

09:14:08 12 MR. FONG: SURE.

09:14:09 13 THE COURT: SUSTAINED.

09:14:10 14 BY MR. FONG:

09:14:11 15 Q WHEN YOU DRAFTED OR WHEN YOU SIGNED  
09:14:14 16 EXHIBIT 192, DID YOU KNOW THE TRUE -- THE FULL  
09:14:19 17 EXTENT AND NATURE OF DR. BROCK AND DR. HANEY'S TAX  
09:14:24 18 LIABILITY?

09:14:25 19 A NO.

09:14:26 20 Q OKAY. AND -- BUT YOU WERE WILLING TO HAVE  
09:14:30 21 YOUR COMPANY ASSUME THEIR LIABILITIES, INCLUDING  
09:14:34 22 TAX LIABILITIES. WHY?

09:14:36 23 A I'M TAKING THEIR WORD FOR IT, BUT AT THIS  
09:14:42 24 STAGE IT'S STILL PRELIMINARY AND I'M GOING TO ASK  
09:14:44 25 FOR MORE INFORMATION, OF COURSE.



09:14:55 1 Q NOW, BY THE WAY, DURING THIS DISCUSSION THAT  
09:14:58 2 RESULTED IN THE BILL OF SALE BEING SIGNED, WAS  
09:15:01 3 THERE ANY DISCUSSION ABOUT WHETHER OR NOT SAM FUNG  
09:15:06 4 WOULD BE INVOLVED IN THIS PROJECT?

09:15:08 5 A YES, HE WAS PROMISED \$2,000 OF MY SALARY.

09:15:17 6 Q AND FOR WHAT?

09:15:19 7 A TWO THINGS: ONE IS TO SEEK FURTHER ADVICE OR  
09:15:26 8 NEW PROJECTS OR THAT SORT OF BROKER ROLE, BUT ALSO  
09:15:30 9 TO HELP MANAGE THE ASSETS BECAUSE THE ASSETS WERE  
09:15:34 10 ON THE MAINLAND AND I'M IN HAWAII.

09:15:38 11 Q SO THAT MR. FUNG WAS SUPPOSED TO HELP OUT IN  
09:15:44 12 THIS PROJECT?

09:15:44 13 A LIKE A MANAGING ROLE.

09:15:46 14 Q ALL RIGHT. AND --

09:15:50 15 A AND HE WAS LICENSED TO DO THAT.

09:15:52 16 Q OKAY. BY THE WAY, WAS THERE ANY DISCUSSION  
09:15:54 17 ABOUT YOU GETTING A YEARLY COMPENSATION LIKE YOU  
09:15:58 18 GUYS TALKED ABOUT FOR MR. FUNG?

09:16:00 19 A NO.

09:16:00 20 Q OKAY. I'M GOING TO SHOW YOU A DOCUMENT THAT  
09:16:16 21 HAS BEEN ADMITTED INTO EVIDENCE AS 194, AND I'LL  
09:16:19 22 GIVE YOU A COPY OF THAT AS WELL.

09:16:42 23 I'LL PUBLISH THAT ON THE ELMO. FIRST OF  
09:16:44 24 ALL, MR. LIGHTER, DO YOU SEE THE DOCUMENT THAT I  
09:16:47 25 JUST HANDED YOU THAT IS MARKED AS GOVERNMENT'S

09:16:49 1 EXHIBIT 194?

09:16:50 2 A I DO.

09:16:51 3 Q OKAY. AND IT'S A TWO-PAGE DOCUMENT; IS THAT  
09:16:58 4 CORRECT?

09:16:58 5 A YES.

09:16:58 6 Q AND DO YOU RECOGNIZE THE DOCUMENT?

09:16:59 7 A YES.

09:17:00 8 Q AND WHAT IS YOUR UNDERSTANDING OF WHAT  
09:17:03 9 EXHIBIT 194 IS?

09:17:04 10 A THIS IS THE ASSIGNMENT, ALL OF THE INTERESTS  
09:17:16 11 OF THE INCOMING ASSETS TO A CORPORATION AND THE  
09:17:27 12 NAME OF THE CORPORATION IS TO MORRIS BROCK.

09:17:32 13 Q I'M SORRY. I COULDN'T HEAR YOU.

09:17:34 14 A THIS ASSIGNS ALL OF THE ASSETS OF THE HAWAIIN  
09:17:38 15 COLONY HOTEL CORPORATION TO THE BROCKS  
09:17:39 16 INDIVIDUALLY.

09:17:39 17 Q OKAY. NOW, BEFORE WE GET TO MORE OF THE  
09:17:42 18 CONTENT OF THE DOCUMENT, YOU DID SIGN THIS  
09:17:48 19 PARTICULAR DOCUMENT, RIGHT?

09:17:49 20 A I DID.

09:17:50 21 Q AND DID YOU SEE THE BROCKS SIGN ON PAGE 2?

09:17:55 22 A I DID.

09:17:56 23 Q AND THIS WAS ALL PREPARED AND SIGNED ON MARCH  
09:18:03 24 28TH, 2003; IS THAT CORRECT?

09:18:06 25 A YES.

09:18:06 1 Q OKAY. SO YOU JUST TESTIFIED THAT THE INTENT  
09:18:18 2 OF THIS DOCUMENT WAS TO TRANSFER THE HCHC'S  
09:18:22 3 DEVELOPMENT RIGHTS TO THE BROCKS; IS THAT CORRECT?

09:18:24 4 A YES.

09:18:24 5 Q OKAY. WHAT IS YOUR UNDERSTANDING OF WHAT THE  
09:18:33 6 BROCKS WOULD BE PAYING -- OR WHAT WERE THEY PAYING  
09:18:35 7 SOMETHING OR GIVING SOMETHING TO ACQUIRE THESE  
09:18:37 8 RIGHTS?

09:18:38 9 A WELL, THIS ASSIGNMENT WAS MODIFIED BY A  
09:18:47 10 CLARIFICATION. SO THEY ONLY GOT HALF OF THE  
09:18:50 11 ASSETS.

09:18:50 12 Q OKAY. BUT EVEN HALF, WHAT WAS YOUR  
09:18:56 13 UNDERSTANDING OF WHAT THE BROCKS WERE GIVING, IF  
09:18:59 14 ANYTHING, TO RECEIVE THE HALF OF HCHC'S DEVELOPMENT  
09:19:08 15 RIGHTS?

09:19:08 16 A THAT'S A GOOD QUESTION. THEY WERE GIVING THE  
09:19:10 17 PROMISE TO BUILD A HIGH RISE, THE PROMISE TO  
09:19:13 18 CONSOLIDATE OR DEVELOP THE HOTEL IN WAIKIKI AND  
09:19:17 19 THEY KEPT FULL CONTROL OVER THEIR ASSETS AND MY  
09:19:25 20 ASSETS.

09:19:25 21 Q OKAY. BUT WHY WOULD YOU BE WILLING TO DO  
09:19:28 22 THAT?

09:19:28 23 A I FIGURED THAT THE REASON WAS  
09:19:39 24 MYSELF-MOTIVATION OR SELF-BENEFIT WAS ENOUGH TO  
09:19:42 25 MOTIVATE DR. BROCK IF HE HAD HAD THE HOTEL, HE

09:19:46 1 WOULD PROBABLY DEVELOP IT.

09:19:47 2 Q OKAY. WELL, WHAT WOULD YOU GET OUT OF IT IF  
09:19:50 3 THE HOTEL WAS DEVELOPED THE WAY YOU WANTED IT TO  
09:19:53 4 BE?

09:19:53 5 A THE OTHER HALF.

09:19:54 6 Q SO YOU STILL HAVE HALF OF THE INTEREST?

09:19:55 7 A YES.

09:19:56 8 Q OKAY. NOW, THIS DOCUMENT REFERS TO CERTAIN  
09:20:07 9 DEVELOPMENT ASSETS. OKAY.

09:20:10 10 WHAT ARE OR WERE THOSE DEVELOPMENT  
09:20:12 11 ASSETS?

09:20:13 12 A THE VERTICAL DEVELOPMENT RIGHTS AND THE  
09:20:18 13 REVERSION OF THE BUILDING TO THE LEASE EXTENSION  
09:20:21 14 FROM 2015 TO 2050.

09:20:25 15 Q ALL RIGHT. NOW -- AND SO THESE ARE THE  
09:20:28 16 DEVELOPMENT RIGHTS OF HCHC?

09:20:30 17 A THE ONES THAT PHIL WILKERSON BOUGHT.

09:20:34 18 Q OKAY. NOW, I WANT TO DIRECT YOUR ATTENTION --  
09:20:38 19 AND YOU PREPARED THIS DOCUMENT, RIGHT?

09:20:40 20 A I DID.

09:20:41 21 Q DID DR. BROCK, MORRIS BROCK HAVE ANY INPUT  
09:20:49 22 INTO THE PREPARATION OF THIS DOCUMENT?

09:20:50 23 A HE GAVE ME THE TRUST NAME AND THE EMPLOYER  
09:20:54 24 IDENTIFICATION NUMBERS AND WE DISCUSSED, OF COURSE,  
09:21:00 25 AT LENGTH BEFORE ANYBODY SIGNED ANY DOCUMENTS.

09:21:03 1 Q AND NOW, WAS THIS DOCUMENT INTENDED TO BE KIND  
09:21:06 2 OF THE FINAL WORD ON THIS AGREEMENT THAT YOU WERE  
09:21:14 3 REACHING WITH DR. BROCK AND DR. HANEY?

09:21:16 4 A NO. IT WAS MORE TO GIVE ME STANDING AND TO  
09:21:20 5 ASSIST ME IN GETTING STANDING IN THE TRANSACTION SO  
09:21:24 6 I COULD ENFORCE CLEARING THESE PEOPLE UP WITH THE  
09:21:29 7 I.R.S. AND TO GUIDE THE ATTORNEYS IN AN ESCROW TYPE  
09:21:39 8 CLOSING, A FORMAL CLOSING.

09:21:41 9 Q SO YOU WERE ANTICIPATING THAT ULTIMATELY THE  
09:21:44 10 ATTORNEYS WOULD GET INVOLVED AND DRAFT AND PREPARE  
09:21:46 11 THE FINAL DOCUMENTS?

09:21:47 12 A YES. IT'S TOO COMPLEX NOT TO HAVE ATTORNEYS  
09:21:50 13 INVOLVED.

09:21:51 14 Q ALL RIGHT. I'M GOING TO DIRECT YOUR ATTENTION  
09:21:57 15 TO THE LAST SENTENCE OF THE -- TO THE ONE, TWO,  
09:22:04 16 THREE -- THE FOURTH PARAGRAPH DOWN ON PAGE 1.

09:22:08 17 DO YOU SEE WHERE I'M POINTING AT?

09:22:10 18 A YES.

09:22:10 19 Q AND IT READS, "NO WARRANTY OF ANY KIND IS  
09:22:13 20 PROVIDED AS TO THE VALUE OF SAID ASSETS."

09:22:17 21 DO YOU SEE THAT?

09:22:18 22 A YES.

09:22:18 23 Q OKAY. NOW, WHAT IS YOUR UNDERSTANDING OF WHAT  
09:22:24 24 THAT SENTENCE MEANT?

09:22:25 25 A IT'S THE SAME AS BROCKS MAKING NO WARRANTY ON

09:22:29 1 THE VALUE OF THEIR TRUST.

09:22:33 2 THIS IS A CONCEPTUAL TRANSACTION AT THIS  
09:22:37 3 POINT AND THERE'S NO APPRAISALS, THERE'S NO TITLE  
09:22:40 4 SEARCHS.

09:22:41 5 Q AND THE ASSET THAT WAS REFERRED TO FOR WHICH  
09:22:46 6 THERE WAS NO WARRANTY, THE ASSETS WERE THE  
09:22:50 7 DEVELOPMENT RIGHTS OF HCHC; IS THAT CORRECT?

09:22:53 8 A CORRECT.

09:22:53 9 Q OKAY. AND THEN IT SAYS, "ASSIGNEE WILL MAKE  
09:22:59 10 ALL REASONABLE EFFORTS TO CONSOLIDATE AND DEVELOP  
09:23:01 11 THE HAWAIIN COLONY HOTEL CORPORATION AS PROVIDED IN  
09:23:03 12 SAID DOCUMENT," AND IT HAS A BUNCH OF NUMBERS.

09:23:08 13 NOW, AGAIN -- FIRST OF ALL, WHO WAS THE  
09:23:10 14 ASSIGNEE IN THIS PARTICULAR DOCUMENT?

09:23:12 15 A THE BROCKS.

09:23:16 16 Q OKAY. AND WHAT IS YOUR UNDERSTANDING OF THE  
09:23:21 17 OF THE MEANING OF THIS SENTENCE THAT WE JUST LOOKED  
09:23:26 18 AT "ASSIGNEE WILL MAKE ALL REASONABLE EFFORTS TO  
09:23:30 19 CONSOLIDATE AND DEVELOP THE HAWAIIN COLONY HOTEL  
09:23:32 20 CORPORATION"?

09:23:34 21 A TO CONSOLIDATE THE HOTEL, THERE NEEDED TO BE  
09:23:36 22 ENOUGH FUNDS TO BUY THE TITLE BECAUSE ALL WE HAD  
09:23:41 23 WAS LEASE OLD INTEREST, FOR EXAMPLE.

09:23:43 24 Q OKAY. I'M GOING TO DIRECT YOUR ATTENTION TO  
09:23:48 25 THE BOTTOM OF PAGE 1 OF EXHIBIT 194.

09:23:53 1 IT READS, "NO PARTY OF ANY KIND IS  
09:23:56 2 PROVIDED AS TO THE VALUE OF THE ABOVE SAID BUSINESS  
09:23:59 3 TRUSTS."

09:24:00 4 DO YOU SEE THAT?

09:24:02 5 A I DO.

09:24:02 6 Q AND WHAT IS THAT REFERRING TO?

09:24:04 7 A THE BROCKS ASSETS WERE ASSIGNED NO VALUE  
09:24:10 8 BECAUSE THERE WAS NO PROPER DUE DILIGENCE DONE AT  
09:24:13 9 THIS POINT. THIS IS FOR THE REASONS THAT I ALREADY  
09:24:17 10 STATED.

09:24:17 11 Q OKAY. BUT -- SO YOU JUST TESTIFIED THAT NO  
09:24:22 12 DUE DILIGENCE HAD BEEN DONE BY EITHER SIDE?

09:24:25 13 MS. WONG: OBJECTION, ASKED AND ANSWERED.

09:24:26 14 THE COURT: SUSTAINED.

09:24:31 15 BY MR. FONG:

09:24:31 16 Q BEARING IN MIND WHAT YOU JUST TESTIFIED TO,  
09:24:33 17 NOW, MR. LIGHTER, THE NEXT SENTENCE READS "ALL  
09:24:36 18 REASONABLE DUE DILIGENCE HAS BEEN PERFORMED BY THE  
09:24:38 19 PARTIES, INCLUDING PROFESSIONAL CONSULTATION BY  
09:24:41 20 ATTORNEYS, ACCOUNTANTS, AND OTHER PROFESSIONAL  
09:24:47 21 CONSULTANTS."

09:24:49 22 NOW, FIRST OF ALL, YOU UNDERSTAND WHAT  
09:24:50 23 THAT SENTENCE MEANS, RIGHT?

09:24:52 24 A I DO.

09:24:52 25 Q OKAY. AND WE MEANT THAT -- WELL, WHAT DOES IT

09:24:57 1 MEAN TO YOU, THAT SENTENCE?

09:24:58 2 A WELL, SOME DUE DILIGENCE HAD BEEN MADE. WE  
09:25:06 3 WENT THROUGH DOCUMENTS AND DISCUSSED ASPECTS OF  
09:25:10 4 BOTH SIDES. BUT THE INTENT WAS TO HAVE AND  
09:25:13 5 ENCOURAGE OTHER PROFESSIONALS TO COME IN AND  
09:25:19 6 SUBSTANTIATE THE STATEMENTS.

09:25:21 7 Q NOW I'M GOING TO DIRECT YOUR ATTENTION TO THE  
09:25:24 8 VERY LAST PARAGRAPH, WHICH HAPPENS TO BE THE FIRST  
09:25:27 9 PARAGRAPH ON PAGE 2 OF EXHIBIT 194.

09:25:32 10 DO YOU SEE WHERE I'M POINTING?

09:25:34 11 A YES.

09:25:35 12 Q OKAY. "ATTACHED HERETO AND MADE APART HEREOF  
09:25:39 13 BY THIS REFERENCE ARE TRUE AND ACCURATE COPIES,"  
09:25:41 14 AND THEN IT APPEARS TO BE THREE DIFFERENT DOCUMENTS  
09:25:46 15 JANUARY 3RD, 1997, REPLY BRIEF OF ERIC LIGHTER IN  
09:25:50 16 THE FIRST HAWAIIN BANK -- IS IT V. ALOHA VAIL --

09:25:57 17 A VAIL.

09:25:57 18 Q VAIL, I'M SORRY.

09:25:58 19 AND THEN JULY 14TH, 1998, ACKNOWLEDGEMENT  
09:26:02 20 BRIEF OF MR. LIGHTER IN HAWAII SUPREME COURT; AND  
09:26:06 21 THEN NOVEMBER 15TH, 1996, OPENING BRIEF OF  
09:26:09 22 MR. LIGHTER IN THE HAWAII SUPREME COURT IN THE  
09:26:11 23 FIRST HAWAIIN BANK V. ALOHA VAIL.

09:26:16 24 DO YOU SEE THAT PARAGRAPH?

09:26:19 25 A I DO.



Q AND WHAT WAS THE MEANING OF THAT PARAGRAPH?

I'M SORRY, GO AHEAD. I INTERRUPTED YOU.

A IT WAS PART OF THE EXTENSIVE DOCUMENTATION I GAVE DR. BROCK AND SPECIFICALLY IT WENT INTO DETAIL AS TO THE ASSETS OF THE FREE AND CLEAR DEVELOPMENT ASSETS OF HCHC.

Q OKAY. NOW -- BUT AT THE TIME THAT YOU SIGNED THIS DOCUMENT, YOU KNEW THAT THERE WAS A DISPUTE OVER WHETHER OR NOT -- OVER THE DEVELOPMENT RIGHTS OF THE VERTICAL DEVELOPMENT RIGHTS, RIGHT?

A THE DISPUTE WAS OVER SLANDER OF TITLE. THERE WAS NO DISPUTE AS TO THE FORECLOSURE BECAUSE THE SUPREME COURT HAD RULED THE ALLEGED FORECLOSURE TO BE AN INTERLOCUTORY. THERE WAS FIVE FINAL ORDERS AND TWO JUDGMENTS SUBJECT TO THE DEVELOPMENT RIGHTS AND THE AIR RIGHTS EASEMENT.

Q BUT YOU JUST TESTIFIED TO THAT WAS YOUR UNDERSTANDING OF WHAT WAS GOING ON, RIGHT?

A AND THESE ARE THE DOCUMENTS THAT I HAVE ATTACHED TO THIS ASSIGNMENT.

Q SO BY ATTACHING THESE DOCUMENTS AND GIVING THEM TO THE BROCKS AS PART OF THIS TRANSACTION, WHAT WERE YOU TRYING TO DO?

A PUT THEM ON NOTICE AND GOOD FAITH DISCLOSURE AS TO THE ACTUAL FACTS, MANY OF THE ACTUAL FACTS

09:28:01 1 THAT I COULD REASONABLY AND CONCISELY AS POSSIBLE  
09:28:06 2 GIVE THEM.

09:28:07 3 Q OKAY. NOW, BUT WITHIN THESE DOCUMENTS THAT  
09:28:11 4 YOU GAVE TO THE BROCKS, IT SAYS IN THERE THAT  
09:28:18 5 HEY --

09:28:19 6 MS. WONG: OBJECTION, HEARSAY.

09:28:20 7 THE COURT: YOU'RE REFERRING TO THE  
09:28:22 8 DOCUMENTS SO I'LL SUSTAIN THE OBJECTION.

09:28:23 9 BY MR. FONG:

09:28:24 10 Q OKAY. DID YOU UNDERSTAND WHEN YOU GAVE THESE  
09:28:26 11 DOCUMENTS TO THE BROCKS THAT THEY -- THAT YOU WERE  
09:28:30 12 CONVEYING INFORMATION AS TO THE FACT THAT THERE WAS  
09:28:32 13 A DISPUTE OVER THE VERTICAL DEVELOPMENT RIGHTS?

09:28:37 14 A YES.

09:28:38 15 MS. WONG: OBJECTION, ASKED AND ANSWERED.  
09:28:39 16 ALSO HEARSAY.

09:28:40 17 THE COURT: I'LL SUSTAIN THE HEARSAY  
09:28:42 18 OBJECTION.

09:28:42 19 BY MR. FONG:

09:28:43 20 Q OKAY. WHAT WAS YOUR UNDERSTANDING OF WHAT WAS  
09:28:56 21 CONTAINED IN THOSE DOCUMENTS IN TERMS OF THE STATUS  
09:28:59 22 OF THE VERTICAL DEVELOPMENT RIGHTS?

09:29:02 23 MS. WONG: OBJECTION, HEARSAY. IT CALLS  
09:29:04 24 FOR A HEARSAY ANSWER.

09:29:08 25 THE COURT: IT DOES CALL FOR HEARSAY. I

09:29:10 1 THINK HE TESTIFIED TO THIS ALSO. I BELIEVE HE HAS  
09:29:12 2 ALREADY GIVEN HIS OPINION ON THIS. YOU CAN ASK  
09:29:23 3 ANOTHER QUESTION, MR. FONG.

09:29:25 4 BY MR. FONG:

09:29:25 5 Q NOW, WAS THERE ANOTHER DOCUMENT THAT WAS  
09:29:26 6 PREPARED AND SIGNED AT THAT MEETING WITH THE  
09:29:29 7 BROCKS?

09:29:29 8 A THE PROMISSORY NOTE.

09:29:31 9 Q OKAY. AND WHAT DOES THE PROMISSORY NOTE --  
09:29:50 10 AND WHAT DOES THE PROMISSORY NOTE SAY, IF YOU  
09:29:52 11 REMEMBER?

09:29:52 12 A IT WAS A NORMAL PROMISSORY NOTE BUT WITH ONE  
09:29:54 13 SIGNATURE, A DEBTOR, HAWAIIN COLONY HOTEL  
09:30:03 14 CORPORATION.

09:30:03 15 Q OKAY. ALL RIGHT. I'M GOING TO SHOW YOU --

09:30:07 16 A AND --

09:30:08 17 Q I'M SORRY. WHAT?

09:30:09 18 A AND IN ADDITION IT GAVE THE DEBTOR A DOLLAR  
09:30:14 19 FOR DOLLAR CREDIT ON ANY TAXES PAID.

09:30:20 20 Q OKAY.

09:30:21 21 A TO THE CREDITOR OF THE CREDITOR.

09:30:23 22 Q WELL, FIRST OF ALL, LET'S BACK UP. YOU SAID  
09:30:26 23 THAT THE PROMISSORY NOTE WAS FROM WHOM TO WHOM?

09:30:29 24 A HCHC. AND I DIDN'T SAY TO WHOM, BUT IT WAS TO  
09:30:33 25 THE BROCKS.

09:30:34 1 Q ALL RIGHT. AND HOW MUCH WAS IT FOR?

09:30:36 2 A \$2,285,000.

09:30:40 3 Q I'M SORRY?

09:30:41 4 A 2.285 MILLION.

09:30:43 5 Q OKAY. 2.285 MILLION.

09:30:46 6 A OKAY.

09:30:46 7 Q AND YOU ALSO TESTIFIED THAT THERE WAS SOME  
09:30:52 8 KIND OF A DOLLAR FOR DOLLAR CREDIT?

09:30:55 9 A YES.

09:30:55 10 MS. WONG: OBJECTION. ASKED AND  
09:30:57 11 ANSWERED.

09:30:57 12 THE COURT: IT WAS. I'LL ALLOW IT TO  
09:30:58 13 REMAIN. YOU CAN ASK THE NEXT QUESTION.

09:31:05 14 BY MR. FONG:

09:31:06 15 Q WHAT WERE YOU REFERRING TO IN TERMS OF THE  
09:31:08 16 DOLLAR FOR DOLLAR CREDIT? WHAT WERE YOU TRYING  
09:31:10 17 ACCOMPLISH?

09:31:10 18 A IF HCHC PAID A DOLLAR, THE BROCKS HAD ALL OF  
09:31:22 19 THEIR TRUST -- REALLY WHAT I MEANT WAS THAT THE  
09:31:25 20 BROCKS' TAXES AND THEN HCHC WOULD OWE \$1 LESS ON  
09:31:31 21 THE PROMISSORY NOTE.

09:31:35 22 Q SO IT WAS A DOLLAR FOR DOLLAR CREDIT?

09:31:37 23 A CORRECT.

09:31:38 24 Q AND WHY WAS THAT PROVISION PUT IN THE  
09:31:40 25 PROMISSORY NOTE?

09:31:40 1 A TO THROW ME A FEW CRUMBS.

09:31:54 2 Q WELL, AT THE TIME DID YOU KNOW THE TAX  
09:31:57 3 LIABILITY THAT HCHC WAS ASSUMING?

09:32:01 4 A NO, I HAD A REPRESENTATION FROM THE BROCKS  
09:32:04 5 THAT IT WAS AROUND \$50,000 AND THAT WAS IN THE BILL  
09:32:08 6 OF SALE.

09:32:08 7 Q NOW. I WANT TO SHOW YOU A COPY OF THE  
09:32:11 8 PROMISSORY NOTE WHICH IS GOVERNMENT'S EXHIBIT  
09:32:18 9 194 THAT HAS NOT BEEN ADMITTED INTO EVIDENCE --  
09:32:21 10 193, EXCUSE ME. I APOLOGIZE. 193 HAS NOT BEEN  
09:32:24 11 ADMIT THE INTO EVIDENCE.

09:32:25 12 FIRST OF ALL, DO YOU SEE THE DOCUMENT IN  
09:32:28 13 FRONT OF YOU?

09:32:28 14 A YES, I DID. I MADE A MISTAKE ON WHO THE  
09:32:31 15 CREDITOR WAS.

09:32:32 16 MR. O'REILLY: EXCUSE ME, YOUR HONOR. I  
09:32:33 17 DO BELIEVE THAT 193 HAS BEEN ADMITTED INTO  
09:32:36 18 EVIDENCE.

09:32:36 19 MR. FONG: WELL, THANK YOU. I APPRECIATE  
09:32:37 20 IT.

09:32:38 21 THE WITNESS: AND I MADE A MISTAKE AS TO  
09:32:40 22 WHO THE CREDITOR WAS.

09:32:42 23 BY MR. FONG:

09:32:43 24 Q OKAY. WELL, WHO WAS -- WELL, TO WHOM WAS THE  
09:32:50 25 NOTE CREDIBLE?

09:32:52 1 A WEST COAST CREDIT AND DEVELOPMENT CORPORATION.

09:32:57 2 Q AND, NOW, YOU TESTIFIED EARLIER THAT YOU  
09:32:59 3 THOUGHT THE NOTE HAD BEEN PAYABLE TO THE BROCKS.

09:33:01 4 TELL ME WHAT IS THE WEST COAST CREDIT AND  
09:33:04 5 DEVELOPMENT CORPORATION?

09:33:05 6 A IT WAS AN ONCOMING NOT YET FORMED CORPORATION  
09:33:12 7 THAT SAM FUNG WAS GOING TO BE THE REGISTERED AGENT  
09:33:20 8 FOR THE BROCKS.

09:33:20 9 Q OKAY. AND WHAT WAS THE PURPOSE OF FORMING  
09:33:23 10 WEST COAST CREDIT AND DEVELOPMENT CORPORATION?

09:33:38 11 A TO HOLD THE PROMISSORY NOTE AND THE LIENS AND  
09:33:49 12 FOR THE BROCK'S BENEFIT TO CONTROL THEIR ASSETS AND  
09:33:52 13 THE HOTEL ASSETS SUBJECT TO THE LIENS OF THE I.R.S.

09:33:57 14 Q NOW, AT THE TIME THAT THIS DOCUMENT WAS SIGNED  
09:34:03 15 ON MARCH 28TH, 2003, WHAT WAS YOUR UNDERSTANDING  
09:34:10 16 AND INTENTION IN TERMS OF WHO WOULD OWN WEST COAST  
09:34:12 17 CREDIT AND DEVELOPMENT CORPORATION?

09:34:14 18 A THERE'S NO DOUBT IT WAS THE BROCKS.

09:34:15 19 Q 100 PERCENT?

09:34:17 20 A YES.

09:34:17 21 Q AND WOULD YOU HAVE ANY OWNERSHIP RIGHTS OR  
09:34:20 22 INTEREST IN WEST COAST CREDIT AND DEVELOPMENT  
09:34:23 23 CORPORATION?

09:34:24 24 A NO.

09:34:24 25 Q NOW, I'M GOING TO SHOW YOU, YOU TESTIFIED

09:34:37 1 EARLIER AND I THINK THIS DOCUMENT IS ALREADY IN  
09:34:39 2 EVIDENCE, THAT THERE WAS A SUBSEQUENT CONFIRMATION  
09:34:42 3 AND CLARIFICATION OF THE ASSIGNMENT. DO YOU  
09:34:49 4 REMEMBER THAT?

09:34:50 5 A I DO.

09:34:51 6 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AND  
09:34:53 7 ADMITTED AS GOVERNMENT'S EXHIBIT 197.

09:34:55 8 I'LL GIVE YOU A PAPER COPY AS WELL.

09:35:14 9 A THANK YOU.

09:35:15 10 Q FIRST OF ALL, DO YOU SEE THAT SINGLE PAGE  
09:35:17 11 DOCUMENT, SIR?

09:35:17 12 A I DO.

09:35:18 13 Q AND THAT'S GOVERNMENT'S EXHIBIT 197; IS THAT  
09:35:21 14 CORRECT?

09:35:21 15 A CORRECT.

09:35:21 16 Q AND WE SEE TWO SIGNATURES HERE.

09:35:23 17 FIRST OF ALL, THE FIRST ONE THAT I'M  
09:35:26 18 POINTING TO, THE HIGHER ONE OF THE TWO, IS THAT  
09:35:29 19 YOUR SIGNATURE?

09:35:30 20 A YES.

09:35:30 21 Q AND THEN THE SECOND ONE, IS THAT ALSO YOUR  
09:35:33 22 SIGNATURE?

09:35:33 23 A YES.

09:35:34 24 Q OKAY. AND THE TITLE OF THIS DOCUMENT IS  
09:35:36 25 "CONFIRMATION AND CLARIFICATION OF ASSIGNMENT."

09:35:38 1 DO YOU SEE THAT?

09:35:39 2 A YES.

09:35:39 3 Q OKAY. AND WHEN WAS THIS DOCUMENT PREPARED?

09:35:44 4 A MARCH 28TH, BUT I HAD ALREADY LEFT THE BROCKS.

09:35:49 5 Q SO IT WAS NOT PREPARED AND SIGNED IN FRONT OF  
09:35:53 6 THE BROCKS?

09:35:54 7 A NO.

09:35:54 8 Q OKAY. AND WHAT WAS THE PURPOSE -- DID YOU  
09:35:57 9 PREPARE THIS DOCUMENT, RIGHT?

09:35:59 10 A I DID.

09:35:59 11 Q AND WHAT WAS THE PURPOSE IN PREPARING THIS  
09:36:01 12 DOCUMENT?

09:36:01 13 A WELL, THE FIRST REASON WAS THAT TO CORRECT THE  
09:36:06 14 MODIFIED ASSIGNMENT BECAUSE I READ IT AGAIN AND  
09:36:12 15 I -- THE ASSIGNMENT GAVE 100 PERCENT OF HCHC'S  
09:36:17 16 ASSETS TO THE BROCKS. IT WAS ONLY SUPPOSED TO BE  
09:36:20 17 50 PERCENT.

09:36:21 18 Q OKAY. OKAY.

09:36:28 19 IS THAT WHAT SENTENCE NUMBER ONE DOES IS  
09:36:31 20 "ASSIGNEE'S RECEIVED PERCENTAGE INTEREST IS  
09:36:35 21 50 PERCENT."

09:36:36 22 A YES.

09:36:36 23 Q AND THEN IT GOES ON, "ASSETS ASSIGNEE RECEIVED  
09:36:40 24 IS SAID 50 PERCENT OF ALL OF THE DEVELOPMENT RIGHTS  
09:36:45 25 OF LIGHTER IN THE HAWAIIN COLONY HOTEL."



09:36:47 1 DO YOU SEE THAT?

09:36:49 2 A YES.

09:36:53 3 Q "TOGETHER WITH AN IDENTICAL PERCENTAGE OF ALL  
09:36:54 4 DEVELOPMENT RIGHTS IN SAID HAWAIIN COLONY HOTEL  
09:36:55 5 CORPORATION HELD BY ANY AND ALL ENTITIES UNDER THE  
09:36:57 6 CONTROL OF LIGHTER."

09:36:58 7 DO YOU SEE THAT?

09:36:59 8 A I DO.

09:36:59 9 Q "AND INCLUDING THE EXTENSION LEASE WITH FULL  
09:37:03 10 REVERSIONS OF ALL IMPROVEMENTS FROM 2014 TO 2050."

09:37:08 11 DO YOU SEE THAT?

09:37:08 12 A YES.

09:37:08 13 Q AND WHAT DOES THAT REFER TO, THE LAST PART  
09:37:12 14 ABOUT THE REVERSION?

09:37:13 15 A THAT'S THE LEASE EXTENSION. IT WAS A SEPARATE  
09:37:21 16 INDENTURE WITH SEPARATE CONSIDERATION FREE AND  
09:37:24 17 CLEAR AND IT HAD BEEN LITIGATED IN THE BANKRUPTCY  
09:37:26 18 AND I HAD A VERBAL STIPULATION WITH THE "P OWNER"  
09:37:32 19 AND THE BANK REGARDING THIS.

09:37:34 20 Q OKAY. AND DID YOU BELIEVE THAT THE REVERSION  
09:37:41 21 INTEREST WOULD HAVE VALUE?

09:37:42 22 A IMMENSE VALUE.

09:37:47 23 Q HOW SO?

09:37:53 24 A UNLIKE THE MAINLAND HERE IN CALIFORNIA, HALF  
09:37:57 25 OF THE PROPERTIES IN COASTAL HAWAII ARE LEASE HOLD,

OWNED BY BIG LAND OWNERS AND SUGAR PLANTATION PARENTS BASICALLY. SO MOST WAIKIKI HOTELS ARE ON LEASE HOLD LAND. SO, THEREFORE, IF YOU HAVE A LONG GROUND LEASE, IT'S WORTH BUILDING A HIGH RISE.

Q OKAY. BUT AT THE TIME THIS DOCUMENT WAS SIGNED AROUND LATE MARCH OF 2003, WHAT WAS THE STATUS OF THE GROUND LEASE FOR THE HAWAIIN COLONY HOTEL CORPORATION? WHO CONTROLLED IT?

A HCHC.

Q OKAY.

A THE EXTENSION LEASE. THE GROUND LEASE THAT ENDS IN 2015 OR 2014 OR 15, WHATEVER IT IS, WAS OWNED BY ANOTHER PARTY.

Q SO AT THE TIME THAT THIS DOCUMENT WAS PREPARED AND SIGNED, ANOTHER PARTY, NOT HCHC, SOMEBODY OTHER THAN YOURSELF OWNED THE LEASE, THE GROUND LEASE TO THE HAWAIIN COLONY HOTEL CORPORATION?

A CORRECT.

Q BUT THAT WAS -- YOUR UNDERSTANDING WAS THAT IN THE YEAR 2014 OR SO, IT WOULD REVERT BACK TO HCHC?

A CORRECT.

MS. WONG: OBJECTION, ASKED AND ANSWERED.

THE COURT: SUSTAINED. THE ANSWER WILL BE STRICKEN.

BY MR. FONG:

Q ALL RIGHT. THEN LET ME MOVE ON THEN TO THE  
THIRD PARAGRAPH.

IT SAYS, "LIGHTER RESERVES ALL RIGHTS TO  
CONTROL DESIGN AND ARCHITECTURE OF ANY DEVELOPMENT  
AT SAID CORPORATION, THE WEST COAST CREDIT  
DEVELOPMENT COMPANY."

DO YOU SEE THAT?

A YOU SKIPPED A LINE.

Q I'M SORRY. I APOLOGIZE. YOU'RE ABSOLUTELY  
RIGHT.

PARAGRAPH 3 READS: "LIGHTER RESERVES ALL  
RIGHTS TO CONTROL DESIGN AND ARCHITECTURE OF ANY  
DEVELOPMENT AT SAID HAWAIIN COLONY HOTEL  
CORPORATION?"

DO YOU SEE THAT?

A YES.

Q OKAY. WHAT WAS YOUR INTENTION IN PUTTING THAT  
SENTENCE IN?

A THERE WERE PERSONAL REASONS. I WANTED TO HAVE  
DESIGN CONTROL.

Q AND BESIDES THE -- WELL, LET ME MOVE ON TO THE  
NEXT SENTENCE. "WEST COAST CREDIT AND DEVELOPMENT  
ONE, INC., AN OREGON CORPORATION, WHICH IN ALL  
OTHER RESPECTS IS THE HIGH RISE DEVELOPER FOR THE  
HAWAIIN COLONY HOTEL PROJECT."

09:40:43 1 DO YOU SEE THAT?

09:40:44 2 A YES. YES.

09:40:46 3 MS. WONG: OBJECTION, YOUR HONOR. THE  
09:40:47 4 DOCUMENT SPEAKS FOR ITSELF.

09:40:48 5 MR. FONG: I WAS GOING FOLLOW UP WITH A  
09:40:51 6 QUESTION, YOUR HONOR.

09:40:51 7 THE COURT: OKAY. IF HE UNDERSTANDS  
09:40:53 8 THIS. I'M NOT SURE WHAT THE PURPOSE OF READING IT  
09:40:57 9 IF HE HAS IT IN FRONT OF HIM BUT GO AHEAD AND ASK  
09:40:59 10 THE QUESTION, MR. FONG.

09:41:00 11 MR. FONG: OKAY.

09:41:01 12 Q WHO WOULD END UP, IF THIS PROJECT WITH THE  
09:41:06 13 BROCKS WOULD GO THROUGH, WHO WOULD END UP WITH THE  
09:41:10 14 CONTROL OVER THE DEVELOPMENT RIGHTS OF THE HAWAIIN  
09:41:14 15 COLONY HOTEL CORPORATION?

09:41:14 16 A MORRIS BROCK AND HIS CORPORATION.

09:41:16 17 Q AND -- BUT YOU DID RESERVE FOR YOURSELF THE  
09:41:20 18 RIGHT TO CONTROL THE DESIGN AND ARCHITECTURE,  
09:41:23 19 RIGHT?

09:41:23 20 A THAT'S ALL.

09:41:23 21 Q NOW, IN THIS DOCUMENT YOU ALSO GAVE AN  
09:41:34 22 ESTIMATE OF HOW MUCH MONEY IT MIGHT TAKE FOR THE  
09:41:36 23 DEVELOPMENT TO BE CARRIED OUT, RIGHT?

09:41:38 24 A I DID.

09:41:38 25 Q AND WHAT WERE THOSE NUMBERS?

09:41:40 1 A THE CONSOLIDATION AND THE INTERESTS AND THE  
09:41:50 2 FEE AT THE TIME I ESTIMATED AT ABOUT 6 MILLION.  
09:41:54 3 Q OKAY. AND DID THAT INCLUDE ATTORNEY'S FEES?  
09:42:01 4 A I'M SURE IT DID. MAYBE NOT. IT WAS  
09:42:11 5 CONSOLIDATION COSTS.  
09:42:12 6 Q AND THERE'S A REFERENCE ON PAGE 5 THAT  
09:42:15 7 ASSIGNEE RECOGNIZES THAT IT IS ESTIMATED THAT  
09:42:17 8 APPROXIMATELY \$250,000 IN LEGAL EXPENSES -- DO YOU  
09:42:22 9 SEE THAT?  
09:42:23 10 A THAT REFRESHES MY MEMORY.  
09:42:25 11 Q OKAY. AND WHAT LEGAL EXPENSES WERE YOU  
09:42:27 12 ANTICIPATING?  
09:42:28 13 A IT'S VERY COMMON FOR DEVELOPERS TO BE SUED BY  
09:42:36 14 A LOT OF PEOPLE.  
09:42:38 15 Q ALL RIGHT.  
09:42:39 16 A SO WHEN YOU'RE DOING A DEVELOPMENT, YOU HAVE  
09:42:41 17 TO -- AND I SEE THE ESTIMATE MADE THERE WAS 5  
09:42:49 18 MILLION WITH THE CONSOLIDATION THAT SOUNDS RIGHT.  
09:42:51 19 Q ALL RIGHT. WELL, DID YOU SEND THIS DOCUMENT,  
09:43:03 20 EXHIBIT 197, TO ANYBODY?  
09:43:04 21 A I FAXED IT TO THE BROCKS' RESIDENCE.  
09:43:07 22 Q OKAY. AND DO YOU RECALL APPROXIMATELY WHEN  
09:43:13 23 YOU FAXED IT TO THE BROCKS?  
09:43:14 24 A A FEW DAYS LATER WHEN I GOT BACK TO HAWAII.  
09:43:17 25 Q OKAY. WAS THERE ANYTHING ELSE THAT WAS

09:43:26 1 DISCUSSED AT THE MEETING AT THE BROCKS' HOUSE THAT  
09:43:28 2 WE HAVE NOT TALKED ABOUT?

09:43:30 3 A NOT THAT I CAN RECALL AT THIS TIME.

09:43:46 4 Q AND YOU TESTIFIED A LITTLE BIT EARLIER THAT  
09:43:48 5 THE BROCKS GAVE SOME DOCUMENTS, RIGHT?

09:43:50 6 A TO SAM FUNG.

09:43:51 7 Q ALL RIGHT. AND DID YOU EVER KEEP POSSESSION  
09:44:00 8 OF THESE DOCUMENTS AFTER YOU LEFT THE BROCKS'  
09:44:04 9 HOUSE?

09:44:04 10 A NO.

09:44:05 11 Q NOW, WHEN YOU LEFT THE BROCK MEETING, HOW WERE  
09:44:10 12 YOU FEELING ABOUT THE PROSPECT OF DOING THIS  
09:44:13 13 BUSINESS WITH DR. BROCK?

09:44:14 14 A OPTIMISTIC. HE WAS A VERY ENERGETIC FELLOW.

09:44:18 15 Q ALL RIGHT. AND DID THIS OPTIMISM OF YOURS,  
09:44:24 16 DID THAT STAY IN PLACE FOR A LITTLE WHILE?

09:44:26 17 A YES. DR. BROCK WROTE ME A LETTER ON MARCH  
09:44:29 18 30TH, TWO DAYS LATER.

09:44:31 19 Q DR. BROCK SENT YOU A LETTER. OKAY. AND LET  
09:44:34 20 ME SHOW YOU A DOCUMENT THAT HAS BEEN IDENTIFIED AS  
09:44:42 21 GOVERNMENT'S EXHIBIT 196 THAT HAS NOT BEEN ADMITTED  
09:44:52 22 INTO EVIDENCE YET.

09:45:03 23 SIR, DO YOU SEE THE PAGE THAT IS IN FRONT  
09:45:05 24 OF YOU MARKED AS GOVERNMENT'S EXHIBIT 196?

09:45:07 25 A I DO.

09:45:07 1 Q AND DO YOU RECOGNIZE IT?

09:45:08 2 A I DO.

09:45:09 3 Q AND DID YOU RECEIVE EXHIBIT 196 THAT IS --

09:45:13 4 A I DID.

09:45:14 5 Q OKAY. AND WHAT IS YOUR UNDERSTANDING OF WHAT  
09:45:17 6 EXHIBIT 196 IS?

09:45:18 7 A WELL, IT HAS TWO MAIN THINGS.

09:45:24 8 Q WELL, I'M NOT TALKING ABOUT THE CONTENT. WHAT  
09:45:26 9 IS IT?

09:45:27 10 A IT'S A LETTER FROM DR. BROCK ADDRESSING OUR  
09:45:31 11 MEETING.

09:45:31 12 Q OKAY.

09:45:33 13 A TWO DAYS EARLIER.

09:45:34 14 Q AND WAS THAT THE LETTER THAT YOU JUST  
09:45:36 15 TESTIFIED TO A LITTLE BIT EARLIER?

09:45:38 16 A IT IS.

09:45:39 17 MR. FONG: YOUR HONOR, I WANT TO MOVE  
09:45:41 18 INTO EVIDENCE GOVERNMENT'S EXHIBIT 196.

09:45:43 19 MS. WONG: OBJECTION, HEARSAY.

09:45:49 20 MR. FONG: YOUR HONOR, FIRST OF ALL, THE  
09:45:51 21 FOUNDATION HAS BEEN LAID BY CATHERINE HANEY IN HER  
09:45:54 22 TESTIMONY THAT SHE RECOGNIZES THIS AS HER  
09:45:57 23 HUSBAND'S -- HER LATE HUSBAND'S HANDWRITING AND IT  
09:45:59 24 CERTAINLY SHOULD COME IN UNDER RULE 807, THE  
09:46:06 25 CATCHALL HEARSAY EXCEPTION, BECAUSE THERE'S NO

09:46:08 1 DOUBT THAT THIS CAME FROM DR. BROCK AND MR. LIGHTER  
09:46:11 2 HAS TESTIFIED TO IT.

09:46:12 3 IT'S CERTAINLY RELEVANT TO WHAT IS GOING  
09:46:16 4 ON AND IT'S MEANT TO REBUT ANY CHARGES OF  
09:46:19 5 FABRICATION OR ANY LIES IN TERMS OF WHAT  
09:46:25 6 MR. LIGHTER IS TESTIFYING TO AS TO WHAT WENT ON AT  
09:46:27 7 THE MEETING.

09:46:31 8 THE COURT: ARE YOU OFFERING IT FOR THE  
09:46:32 9 TRUTH OF THE MATTER ASSERTED?

09:46:36 10 MR. FONG: IT COMES IN, YOUR HONOR, I  
09:46:37 11 BELIEVE AS A PRIOR INCONSISTENT STATEMENT.

09:46:39 12 THE COURT: OF? OF THE DECEDENT?

09:46:42 13 MR. FONG: I'M SORRY. IT COMES IN UNDER  
09:46:45 14 807, THE CATCH ALL?

09:46:49 15 THE COURT: ANY RESPONSE?

09:46:51 16 MS. WONG: IT'S OBVIOUSLY NOT A PRIOR  
09:46:53 17 CONSISTENT STATEMENT OF MR. LIGHTER AS THE  
09:46:56 18 TESTIMONY SUGGESTED IT'S BY DR. BROCK.

09:46:58 19 AND IN TERMS OF THE RELIABILITY, IT IS  
09:47:01 20 BEING OFFERED FOR ITS TRUTH AND IT DOESN'T FALL  
09:47:04 21 WITHIN ANY OF THE HEARSAY EXCEPTIONS.

09:47:09 22 THE COURT: I'M GOING TO SUSTAIN THE  
09:47:10 23 OBJECTION.

09:47:11 24 MR. FONG: ALL RIGHT. THANK YOU, YOUR  
09:47:12 25 HONOR.



09:47:13 1 THE COURT: YOU'RE WELCOME.

09:47:14 2 BY MR. FONG:

09:47:14 3 Q ALL RIGHT. MR. LIGHTER, AFTER YOU RECEIVED  
09:47:16 4 GOVERNMENT'S EXHIBIT 196, DID YOUR FEELINGS ABOUT,  
09:47:25 5 DID YOUR FEELINGS OF OPTIMISM CHANGE IN TERMS OF  
09:47:27 6 YOUR WORKING WITH DR. BROCK ON THE HCHC PROJECT?

09:47:31 7 A SLIGHTLY. NOT THAT MUCH.

09:47:34 8 Q OKAY. AND HOW DID IT CHANGE?

09:47:36 9 A I WAS GLAD THAT DR. BROCK READ AND GENERALLY  
09:47:42 10 AGREED WITH.

09:47:47 11 MS. WONG: OBJECTION, HEARSAY, TO THE  
09:47:49 12 EXTENT THAT HE'S TESTIFYING ABOUT THE CONTENTS OF  
09:47:51 13 THE LETTER.

09:47:51 14 THE COURT: HE IS TESTIFYING ABOUT THE  
09:47:52 15 CONTENTS. THE OBJECTION IS SUSTAINED AND IT'S  
09:47:55 16 STRICKEN. YOU CAN ASK ANOTHER QUESTION.

09:47:59 17 BY MR. FONG:

09:47:59 18 Q I'M -- I DON'T -- I'M NOT ASKING YOU ABOUT THE  
09:48:01 19 CONTENT OF THE LETTER, I'M TALKING ABOUT YOU SAID  
09:48:03 20 THAT YOUR FEELING HAD CHANGED A LITTLE.

09:48:05 21 WHAT CHANGED SPECIFICALLY?

09:48:07 22 A I WAS GLAD THAT DR. BROCK AGREED THAT THE  
09:48:14 23 HOTEL WAS VALUABLE.

09:48:15 24 MS. WONG: OBJECTION, HEARSAY.

09:48:16 25 THE COURT: SUSTAINED. THAT PORTION IS

09:48:18 1 STRICKEN.

09:48:25 2 BY MR. FONG:

09:48:26 3 Q WELL, WHAT CHANGED IN TERMS OF YOUR -- WHAT  
09:48:28 4 CHANGED IN TERMS OF YOUR OPTIMISM ABOUT THE DEAL  
09:48:31 5 AFTER YOU RECEIVED EXHIBIT 196?

09:48:35 6 A WELL, I WAS DISAPPOINTED THAT DR. BROCK DIDN'T  
09:48:41 7 WANT TO PAY SAM FUNG \$2,000 A MONTH ANY MORE.

09:48:44 8 MS. WONG: OBJECTION.

09:48:45 9 THE COURT: THAT PORTION IS STRICKEN.  
09:48:48 10 SUSTAINED.

09:48:48 11 BY MR. FONG:

09:48:49 12 Q ALL RIGHT. AFTER YOU RECEIVED GOVERNMENT'S  
09:48:50 13 EXHIBIT 196, DID YOU HAVE A CONVERSATION WITH SAM  
09:48:53 14 FUNG?

09:48:55 15 A I DID.

09:48:56 16 Q AND WHAT WAS THE SUBJECT OF THAT CONVERSATION?

09:48:58 17 A I TOLD HIM THAT DR. BROCK DID NOT WANT TO PAY  
09:49:04 18 HIM THE \$2,000 A MONTH.

09:49:07 19 MS. WONG: OBJECTION. HEARSAY.

09:49:08 20 THE COURT: SUSTAINED. IT'S STRICKEN.

09:49:10 21 BY MR. FONG:

09:49:16 22 Q BUT YOU DID HAVE A CONVERSATION WITH SAM FUNG?

09:49:18 23 A I DID.

09:49:18 24 Q OKAY. NOW, AT THE TIME YOU RECEIVED  
09:49:34 25 GOVERNMENT'S EXHIBIT 196, DID YOU THINK THAT THE

09:49:37 1 DEAL WAS GOING TO CONTINUE TO GO THROUGH?

09:49:38 2 A YES, BUT PROBABLY NOT WITH SAM FUNG.

09:49:46 3 Q ALL RIGHT. I CAN STOP THERE.

09:49:47 4 OKAY. NOW, WHAT DID YOU DO NEXT IN TERMS  
09:49:50 5 OF CARRYING OUT WHAT YOU AND DRS. BROCK AND HANEY  
09:49:59 6 AGREED TO IN TERMS OF THE PROJECT, WHAT DID YOU DO  
09:50:02 7 NEXT?

09:50:03 8 A I WROTE ANOTHER LETTER ON APRIL 7TH ANNOUNCING  
09:50:06 9 THAT I WAS GOING TO THE I.R.S. CID WITH THE  
09:50:08 10 DOCUMENTS, THE WAY IT'S SIGNED, THE TRANSACTION  
09:50:12 11 DOCUMENTS AND THE FINANCIAL STATEMENT THAT  
09:50:16 12 DR. BROCK HAD PREPARED WHICH HAD BEEN RETYPED.

09:50:22 13 Q OKAY. NOW, WHAT WAS THE PURPOSE OF YOU GOING  
09:50:28 14 TO CID?

09:50:32 15 A WELL, MY VIEW WAS THAT I HAD STANDING BECAUSE  
09:50:39 16 OF THE PRELIMINARY DOCUMENTS, I HAD STANDING TO GO  
09:50:42 17 TO THE I.R.S. AND DISCLOSE THE TAX LIABILITY THERE  
09:50:45 18 BY IMPOSING THE I.R.S. LIEN ON THE ASSETS INVOLVED.

09:50:56 19 Q ALL RIGHT. NOW, DID YOU -- WHAT DID YOU DO TO  
09:51:00 20 CARRY OUT THIS PLAN TO COMMUNICATE WITH CID?

09:51:03 21 A ON APRIL 7TH, I FILED AN OMNIBUS RETURN, AND  
09:51:06 22 HCHC FILED AN OMNIBUS RETURN, AND THEN IT STILL WAS  
09:51:09 23 ENTITLED AN OMNIBUS RETURN AND ATTACHED THE  
09:51:11 24 TRANSACTION DOCUMENTS, INCLUDING THE CLARIFICATION.

09:51:15 25 Q AND WHEN YOU SAY, "THE TRANSACTION DOCUMENTS,"

09:51:17 1 ARE YOU REFERRING TO THE BILL OF SALE, THE  
09:51:20 2 PROMISSORY NOTE, AND THE ASSIGNMENT AND THE  
09:51:22 3 CLARIFICATION DOCUMENTS WITH THE BROCKS THAT WE  
09:51:24 4 HAVE BEEN TALKING ABOUT THIS MORNING?

09:51:25 5 A YES, BUT I DON'T THINK I INCLUDED THE  
09:51:27 6 PROMISSORY NOTE, JUST REFERENCE TO IT.

09:51:34 7 Q ALL RIGHT. AND WHAT ELSE DID YOU INCLUDE IN  
09:51:35 8 YOUR COMMUNICATION WITH CID?

09:51:37 9 A YOU HAVE A COPY, RIGHT?

09:51:57 10 Q WOULD YOU LIKE TO BE REFRESHED?

09:51:59 11 A I SENT IT CERTIFIED MAIL AND I HAVE THE  
09:52:02 12 ORIGINAL MAILING CERTIFICATE RECEIPT.

09:52:13 13 Q I'M GOING TO SHOW YOU A DOCUMENT THAT HAS BEEN  
09:52:15 14 PREMARKED FOR IDENTIFICATION AS NNN, THREE N'S, AS  
09:52:19 15 IN NANCY.

09:52:29 16 DO YOU SEE THAT DOCUMENT, SIR?

09:52:31 17 A I DO.

09:52:31 18 Q AND, WELL, WHAT IS THAT DOCUMENT? WITHOUT  
09:52:33 19 GOING INTO THE CONTENTS, WHAT IS THE NATURE OF THE  
09:52:35 20 DOCUMENT?

09:52:35 21 A IT IS AN --

09:52:43 22 Q WHAT IS IT?

09:52:44 23 A IT'S A THIN OMNIBUS RETURN.

09:52:46 24 Q ALL RIGHT. OKAY. AND LOOKING AT WHAT HAS  
09:52:47 25 BEEN MARKED AS DEFENDANT'S NNN, DOES THAT REFRESH

09:52:50 1 YOUR RECOLLECTION AS TO WHAT YOU SENT TO CID?

09:52:55 2 A YES, IT DOES.

09:52:56 3 Q AND WHAT DID YOU SEND TO CID?

09:52:59 4 A WHAT I SAID THE BILL OF SALE, THE ASSIGNMENT,  
09:53:02 5 THE CLARIFICATION.

09:53:12 6 Q AND THIS WAS SENT WHEN?

09:53:13 7 A APRIL 7TH.

09:53:15 8 Q SO WITHIN A WEEK OR SO OF YOUR MEETING WITH  
09:53:18 9 DR. HANEY AND DR. BROCK AND SAM FUNG YOU FORWARDED  
09:53:23 10 TO THE CID OF THE I.R.S. IN WASHINGTON ALL OF THE  
09:53:28 11 PERTINENT DOCUMENTS THAT YOU HAD PREPARED AND  
09:53:30 12 SIGNED WITH THE BROCKS?

09:53:31 13 A YES, I WAS STILL ON FRIENDLY TERMS WITH  
09:53:38 14 DR. BROCK AND THE TRANSACTION WAS GOING FORWARD.

09:53:40 15 Q AND WHAT WAS YOUR PURPOSE? WHY DID YOU DO  
09:53:42 16 THIS? WHY SEND THESE DOCUMENTS TO CID? WHAT WAS  
09:53:45 17 YOUR PURPOSE IN DOING THAT?

09:53:46 18 A AGAIN, IT'S TO ENFORCE THE PARAMOUNT LIEN, AND  
09:53:52 19 MY FIRST POSITION LIEN IN FAVOR OF THE I.R.S. IS MY  
09:53:56 20 UNDERSTANDING AS A MATTER OF LAW BASED ON THE  
09:53:59 21 DISCLOSURE OF TAX LIABILITY TO THE I.R.S.

09:54:05 22 WHAT IS IMPOSED IS THE ACTUAL TAX  
09:54:07 23 LIABILITY, WHETHER IT'S A DOLLAR OR \$5 MILLION.

09:54:15 24 Q AND WHY WAS THAT IMPORTANT TO YOU TO  
09:54:17 25 COMMUNICATE THIS TO THE CID?

09:54:18 1 A BECAUSE I JUST HAD BROCK'S WORD FOR IT THAT HE  
09:54:25 2 OWED \$50,000 AND I KNOW THAT HE'S WITH N.T.S. WHICH  
09:54:28 3 IS QUESTIONABLE ETHICS AT THE MINIMUM.

09:54:39 4 Q NOW, DID YOU -- AND THIS WAS SENT ON APRIL 7TH  
09:54:44 5 OF 2003.

09:54:46 6 DID YOU SEND ANYTHING ELSE REGARDING YOUR  
09:54:48 7 TRANSACTIONS WITH THE BROCKS TO CID AT ANY OTHER  
09:54:52 8 TIME?

09:54:52 9 A I DID ON APRIL 14TH I -- AS OF APRIL 14TH I  
09:55:02 10 SENT A SUPPLEMENT TO THE OMNIBUS RETURN.

09:55:06 11 Q AND WHAT WAS CONTAINED IN THE SUPPLEMENT TO  
09:55:09 12 THE OMNIBUS THAT YOU FILED OR SENT TO THE CID ON  
09:55:14 13 APRIL 7TH?

09:55:14 14 A WELL, BY THEN I LEARNED OR HAD HEARD THAT  
09:55:25 15 DR. BROCK HAD PROBABLY COMMITTED GROSS TAX FRAUD  
09:55:28 16 AND SO I TOLD THE I.R.S. THAT THERE'S PROBABLY A  
09:55:31 17 LOT MORE THAN IS ALLEGED THAN THE REPORTED \$50,000.

09:55:34 18 MS. WONG: OBJECTION TO THE EXTENT THAT  
09:55:36 19 HE'S TESTIFYING ABOUT THE CONTEXT OF THAT  
09:55:39 20 SUPPLEMENT. HEARSAY.

09:55:45 21 THE COURT: I'LL ALLOW IT TO REMAIN. YOU  
09:55:46 22 CAN ASK THE NEXT QUESTION.

09:55:47 23 BY MR. FONG:

09:55:48 24 Q OKAY. DID YOU COMMUNICATE TO CID THE AMOUNT  
09:55:51 25 OF TAXES THAT HCHC HAD ASSUMED FROM THE BROCKS

09:55:59 1 TRUST?

09:55:59 2 A ON APRIL 7TH THE ANSWER IS YES.

09:56:02 3 Q AND WHAT DID YOU SAY?

09:56:03 4 A \$50,000 -- WELL, THE DOCUMENT SPEAKS FOR  
09:56:06 5 ITSELF. IT DISCLOSES AT LEAST \$50,000 IN TAXES  
09:56:11 6 DUE.

09:56:11 7 MS. WONG: OBJECTION, HEARSAY.

09:56:12 8 THE COURT: SUSTAINED. STRIKE THAT.

09:56:14 9 HIS LAST ANSWER WILL REMAIN. HE'S  
09:56:17 10 REFERRING A DOCUMENT NOW.

09:56:18 11 MR. FONG: OKAY.

09:56:33 12 Q LET ME TAKE THOSE DOCUMENTS BACK FROM YOU,  
09:56:35 13 MR. LIGHTER.

09:56:36 14 NOW, DID YOU HAVE -- OTHER THAN WHAT YOU  
09:56:38 15 JUST TESTIFIED TO, IN TERMS OF THE BILL OF SALE,  
09:56:40 16 PROMISSORY NOTE, ASSIGNMENT AND THE CLARIFICATION,  
09:56:46 17 DID YOU HAVE ANY OTHER BUSINESS TRANSACTIONS WITH  
09:56:50 18 THE BROCKS?

09:56:52 19 A NO.

09:56:52 20 Q OKAY. NOW, I WANT -- LET ME MOVE ON THEN TO  
09:56:59 21 PROFESSOR JEAN-PAUL BOURDIER.

09:57:04 22 WHEN DID, WHEN DID MR. FUNG, WHEN DID  
09:57:08 23 MR. FUNG FIRST TALK TO YOU ABOUT PROFESSOR  
09:57:12 24 BOURDIER?

09:57:12 25 A I DON'T RECALL, BUT IT WAS PROBABLY AROUND

09:57:20 1 SEPTEMBER OF 2003.

09:57:22 2 Q ALL RIGHT. OKAY. AND WHAT DID MR. FUNG TELL  
09:57:26 3 YOU ABOUT PROFESSOR BOURDIER?

09:57:28 4 A HE TOLD ME THAT ANOTHER NATIONAL TRUST  
09:57:32 5 SERVICES CLIENT OF HIS DIDN'T OWE ANY TAX BUT HAD  
09:57:40 6 INVESTED IN N.T.S. OFFSHORE INVESTMENTS AND LOST  
09:57:44 7 ABOUT \$300,000 AND IT'S WHAT IS CALLED A CASH FOR  
09:57:53 8 TITLE TYPE OF INVESTMENT.

09:57:54 9 Q AND OKAY. NOW, WHAT WAS -- DID YOU AGREE TO  
09:57:57 10 MEET WITH MR. BOURDIER?

09:58:00 11 A YES.

09:58:02 12 Q AND WHAT WAS YOUR, WHAT WAS YOUR INTENTION IN  
09:58:05 13 TERMS OF WHAT YOU WOULD DO?

09:58:06 14 A I WANTED TO FIND OUT FROM HIM PERSONALLY AND  
09:58:19 15 IN A PERSONAL MEETING THAT HIS POSITION WAS THAT HE  
09:58:24 16 REALLY OWED NO TAX.

09:58:26 17 Q WELL --

09:58:27 18 A AND SECONDLY, IS THAT I WANTED TO OFFER A WAY  
09:58:31 19 THAT HE COULD GET POTENTIALLY HOPEFULLY RECOUP HIS  
09:58:38 20 \$20,000 BASED ON THE INCOMING SECURITIES OFFERING.

09:58:42 21 Q I'M SORRY. I'M NOT QUITE SURE I HEARD THE  
09:58:45 22 LAST ANSWER. MAY I TROUBLE YOU TO SAY THAT AGAIN,  
09:58:47 23 THE SECOND POINT?

09:58:48 24 A SECONDLY, TO OFFER HIM A PROPOSED HOPEFUL  
09:58:53 25 RETURN ON REPLACING THE LOST INVESTMENT MONEY BY



09:59:01 1 WAY OF A SECURITIES -- TAKING A PIECE OF THE -- AN  
09:59:09 2 INTEREST IN THE ONCOMING YET-TO-BE DRAFTED  
09:59:17 3 SECURITIES OFFERING FOR THE HOTEL.

09:59:19 4 Q AND WHEN YOU SAY, "THE HOTEL," YOU'RE  
09:59:21 5 REFERRING TO THE HAWAIIAN COLONY HOTEL CORPORATION?

09:59:21 6 A I AM.

09:59:22 7 Q OKAY. NOW, SO DID YOU THINK THAT YOU WOULD BE  
09:59:28 8 INTERESTED IN POSSIBLY WORKING WITH PROFESSOR  
09:59:32 9 BOURDIER AS A PARTNER?

09:59:34 10 A AS A PARTNER.

09:59:35 11 Q ALL RIGHT. AND WHY WAS THAT? WHY WOULD YOU  
09:59:39 12 BE INTERESTED IN WORKING WITH PROFESSOR BOURDIER?

09:59:42 13 A WELL, ASSUMING THAT HE'S CLEANED UP WITH HIS  
09:59:49 14 TAXES, WHAT HE OFFERED HCHC HE'S A MORE DIVERSIFIED  
10:00:00 15 PORTFOLIO FOR THE SECURITIES OFFERING.

10:00:02 16 Q OKAY. SO YOU SAID THAT -- AND WHY DID YOU  
10:00:06 17 BELIEVE, FIRST OF ALL, THAT HE WOULD, PROFESSOR  
10:00:09 18 BOURDIER, IF HE DID BUSINESS WITH YOU, WOULD OFFER  
10:00:12 19 A MORE DIVERSIFIED PORTFOLIO FOR HCHC? WHY DID YOU  
10:00:18 20 BELIEVE THAT?

10:00:19 21 A IT'S JUST COMMON SENSE THAT THE INVESTMENT AND  
10:00:27 22 THE HOLDING COMPANIES AND THE DEVELOPMENT COMPANIES  
10:00:30 23 SECURITY OFFERING, OFFEROR COMPANY OWNS MORE  
10:00:37 24 DIVERSE ASSETS IT MEANS LESS RISK FOR THE INVESTOR  
10:00:44 25 SOLICITED BY THE SECURITY OFFERING.

10:00:46 1 Q AND SO YOU THOUGHT THAT BY BRINGING ON  
10:00:50 2 PROFESSOR BOURDIER INTO THE PROJECT, YOU WOULD MAKE  
10:00:52 3 YOUR SECURITIES OFFERING MORE ATTRACTIVE?

10:00:55 4 A MORE ATTRACTIVE, YES.

10:00:56 5 MS. WONG: OBJECTION, ASKED AND ANSWERED.

10:00:58 6 THE COURT: IT WAS, BUT I'LL ALLOW IT TO  
10:00:59 7 REMAIN. ASK YOUR NEXT QUESTION.

10:01:02 8 MR. FONG: OKAY.

10:01:03 9 Q NOW, WHAT DID YOU UNDERSTAND -- BEFORE -- AT  
10:01:08 10 SOME POINT YOU WENT TO MR. BOURDIER'S HOUSE; RIGHT?

10:01:10 11 A YEAH, I DID.

10:01:12 12 Q BUT BEFORE YOU WENT THERE, DID YOU HAVE ANY  
10:01:14 13 UNDERSTANDING OF WHAT KIND OF ASSETS PROFESSOR  
10:01:16 14 BOURDIER HAD?

10:01:17 15 A NO, AND I ALSO DIDN'T KNOW IF HE REALLY -- HE  
10:01:21 16 MIGHT NEED AN OMNIBUS RETURN AFTER ALL AND IT TURNS  
10:01:27 17 OUT HE DIDN'T.

10:01:28 18 Q ALL RIGHT. SO DID YOU HAVE -- AFTER SAM FUNG  
10:01:31 19 MADE THE INITIAL INTRODUCTION, DID YOU HAVE ANY  
10:01:34 20 CONVERSATIONS WITH PROFESSOR BOURDIER BEFORE YOU  
10:01:37 21 ACTUALLY WENT TO HIS HOUSE?

10:01:38 22 A EXTENSIVE CONVERSATIONS.

10:01:43 23 Q ALL RIGHT. WHAT DID THE TWO OF YOU TALK ABOUT  
10:01:45 24 IN THOSE TELEPHONE CONVERSATIONS BEFORE YOU WENT TO  
10:01:48 25 HIS HOUSE?

10:01:50 1 MS. WONG: OBJECTION, HEARSAY.

10:01:51 2 THE COURT: SUSTAINED.

10:01:54 3 BY MR. FONG:

10:01:55 4 Q AND AT SOME POINT YOU WENT TO PROFESSOR  
10:01:58 5 BOURDIER'S HOUSE, RIGHT?

10:01:59 6 A YES.

10:01:59 7 Q OKAY. AND AGAIN, IT WAS -- HOW LONG OF A TIME  
10:02:02 8 PERIOD WAS IT WHEN YOU FIRST STARTED TALKING WITH  
10:02:06 9 PROFESSOR BOURDIER TO THE TIME THAT YOU ACTUALLY  
10:02:10 10 WENT TO HIS HOUSE?

10:02:13 11 A I HAVE SEEN THE PHONE RECORDS SO I STILL CAN'T  
10:02:18 12 RECALL EXACTLY, A MONTH OR TWO.

10:02:20 13 Q BUT IT WAS A MONTH OR TWO. IT WASN'T, SAY,  
10:02:25 14 SIX MONTHS, RIGHT?

10:02:26 15 A NO.

10:02:27 16 Q AND DO YOU REMEMBER THE -- WELL, FIRST OF ALL,  
10:02:30 17 HOW LONG WERE YOU ACTUALLY AT PROFESSOR BOURDIER'S  
10:02:33 18 HOUSE WHEN YOU MET WITH HIM?

10:02:34 19 A THREE DAYS.

10:02:35 20 Q AND DO YOU REMEMBER THE DATE?

10:02:36 21 A OCTOBER 16TH OR 17TH TO OCTOBER 19TH.

10:02:46 22 Q AND OCTOBER 19TH -- WHAT YEAR, FIRST OF ALL?

10:02:50 23 A 2003.

10:02:51 24 Q SO OCTOBER 19TH OF 2003 WAS THE LAST DAY THAT  
10:02:53 25 YOU WENT TO PROFESSOR BOURDIER'S HOUSE?

10:02:55 1

A CORRECT.

10:02:56 2

Q AND BESIDES THAT THREE OR FOUR-DAY PERIOD THAT

10:03:03 3

YOU WERE AT PROFESSOR BOURDIER'S HOUSE IN

10:03:05 4

MID-OCTOBER OF 2003, HAD YOU EVER BEEN TO HIS HOUSE

10:03:08 5

BEFORE OR AFTER?

10:03:09 6

A NO.

10:03:09 7

Q AND HAD YOU EVER TALKED TO HIM IN PERSON OTHER

10:03:13 8

THAN THAT MEETING IN MID-OCTOBER 2003?

10:03:17 9

A NO.

10:03:17 10

Q OKAY. NOW, WHAT DID YOU DO -- WELL, FIRST OF

10:03:23 11

ALL, WHERE DID YOU STAY WHEN YOU WENT TO VISIT

10:03:26 12

PROFESSOR BOURDIER?

10:03:27 13

A AT BOURDIER'S HOUSE.

10:03:29 14

Q AND -- AND THE ENTIRE TIME THAT YOU WERE

10:03:33 15

THERE?

10:03:33 16

A I HAD A RENTAL CAR SO I COULD DO ERRANDS.

10:03:39 17

Q BUT YOU STAYED AT HIS HOUSE FOR THOSE THREE OR

10:03:43 18

FOUR DAYS, CORRECT?

10:03:44 19

A CORRECT.

10:03:45 20

Q AND WHAT DID YOU DO WHEN YOU WERE THERE FOR

10:03:47 21

THOSE COUPLE OF DAYS?

10:03:48 22

A THE FIRST DAY NOTHING. THE SECOND DAY WE

10:03:57 23

TALKED AND I HELPED HIM -- HE ASSISTED ME IN DOING

10:04:00 24

AN INVENTORY.

10:04:01 25

Q ALL RIGHT. AN INVENTORY OF WHAT?

10:04:02 1 A OF THE ASSETS OF HIS TRUST.

10:04:05 2 Q OKAY. AND WHAT DID YOU -- DID YOU ACTUALLY  
10:04:08 3 SEE THE ASSETS OF HIS TRUST?

10:04:10 4 A SOME OF THEM.

10:04:12 5 Q AND WHAT WERE THEY?

10:04:13 6 A THE GREAT BULK OF THE VALUE WAS IN ART.

10:04:20 7 Q I'M SORRY. WHAT KIND OF ART I WAS GOING TO  
10:04:26 8 ASK YOU.

10:04:27 9 A PAINTINGS, PHOTOGRAPHS, MOVIES, MASTERS, BOOK  
10:04:30 10 MASTERS.

10:04:31 11 Q WAS -- HOW EXTENSIVE WERE THE -- WERE THESE  
10:04:36 12 ITEMS THAT YOU TOOK INVENTORY OF?

10:04:38 13 A HE HAD THOUSANDS OF PHOTOGRAPHS IN -- I'M NOT  
10:04:44 14 A JUDGE OF THE QUALITY, BUT IT LOOKED TO ME LIKE  
10:04:47 15 VERY HIGH QUALITY.

10:04:48 16 Q OKAY. AND NOW, DID THE TWO OF YOU -- WELL,  
10:04:57 17 WHAT DID YOU DO AFTER YOU PHYSICALLY LOOKED AT THE  
10:05:01 18 INVENTORY OF THE ASSETS?

10:05:02 19 A SAM FUNG CAME THE THIRD DAY.

10:05:11 20 I DON'T THINK HE SPENT THE NIGHT. I  
10:05:13 21 THINK HE ACTUALLY CAME IN THE MORNING OF THE THIRD  
10:05:17 22 MORNING OF THE THIRD DAY. I DON'T RECALL EXACTLY,  
10:05:20 23 BUT IT WAS NEAR THE END OF MY TRIP.

10:05:22 24 Q ALL RIGHT.

10:05:23 25 A AND JEAN-PAUL AND I GAVE TO SAM THE DRAFT

NUMBERS OF THE INVENTORY SO THAT HE COULD PRINT IT  
OUT ON HIS COMPUTER.

Q OKAY. DID YOU, OVER THE COURSE OF THOSE  
COUPLE OF DAYS, DID YOU PUT TOGETHER A LIST OF THE  
INVENTORY OF THE ASSETS?

A IN DRAFT FORM HANDWRITTEN.

Q OKAY. AND DID ANYBODY ASSIGN ANY VALUE TO  
THESE ASSETS?

A YES.

Q AND WHO DID?

A WELL, SOME OF THE ITEMS I COULD RECOGNIZE AS  
OFFICE EQUIPMENT AND THINGS LIKE THAT, I COULD  
ESTIMATE THE VALUE. BUT THE ART I HAD NO IDEA. I  
TOOK JEAN-PAUL'S WORD FOR IT.

Q SO PROFESSOR BOURDIER GAVE YOU HIS ESTIMATE OF  
WHAT THE ARTWORK MIGHT BE WORTH?

A YES, AND I REVIEWED -- I LOOKED AT A LOT OF  
THE PHOTOGRAPHS AND THE ART AND -- BUT NOT ALL OF  
IT, NOT EVEN NEAR ALL OF IT.

Q NOW, AT THE TIME THAT SAM FUNG CAME OVER ON  
THAT LAST DAY, WHAT WAS YOUR INTENTION? WHAT WERE  
YOU GOING TO DO IN TERMS OF WORKING WITH PROFESSOR  
BOURDIER?

A A MUTUAL EXCHANGE OF STOCK.

Q YOU SAID A MUTUAL EXCHANGE OF STOCK. WHAT,

10:07:07 1 BETWEEN WHAT AND WHAT?

10:07:08 2 A WELL, THEY SAID THEY HAD A COMPANY CALLED  
10:07:11 3 HEART CORPORATION.

10:07:11 4 Q I'M SORRY. WHEN YOU SAY, "THEY" WHO ARE YOU  
10:07:14 5 REFERRING TO?

10:07:14 6 A SAM FUNG AND BOURDIER -- ACTUALLY BOURDIER.

10:07:20 7 Q SAID THAT THEY HAD A COMPANY?

10:07:21 8 A THAT BOURDIER HAD A COMPANY, A CORPORATION  
10:07:24 9 CALLED HEART CORPORATION.

10:07:25 10 Q OKAY. NOW, THEY SAID THE COMPANY WAS NAMED  
10:07:32 11 HEART CORPORATION?

10:07:33 12 A CORRECT.

10:07:33 13 Q AND, NOW, DID YOU HEAR THE TERM OR THE NAME  
10:07:36 14 HEART MIND CORPORATION WHEN YOU WERE THERE?

10:07:38 15 A NO.

10:07:38 16 Q NOW, YOU SAID THAT YOUR INTENTION WAS TO DO AN  
10:07:49 17 EXCHANGE OF STOCK. OKAY.

10:07:52 18 SO BETWEEN WHICH TWO COMPANIES, EXCHANGE  
10:07:56 19 OF WHAT TWO COMPANIES?

10:07:58 20 A BETWEEN THE HEART CORPORATION AND HCHC.

10:08:03 21 Q OKAY. AND, NOW, HOW MUCH WAS GOING TO BE  
10:08:05 22 EXCHANGED BETWEEN THESE TWO COMPANIES?

10:08:07 23 A 10 PERCENT OR 10 PERCENT -- 100 SHARES OUT OF  
10:08:13 24 1,000 AND 100 SHARES OUT OF 1,000.

10:08:16 25 Q SO EACH COMPANY HAD 1,000 SHARES AND THEY WERE

10:08:20 1 GOING TO EXCHANGE 100 SHARES EACH?

10:08:22 2 A CORRECT.

10:08:22 3 Q AND WHAT WAS THE PURPOSE BEHIND THAT?

10:08:25 4 A WELL, 100 SHARES DOESN'T SOUND LIKE A LOT BUT  
10:08:29 5 IN A SECURITIES OFFERING IT WOULD BE SUBSTANTIAL.

10:08:36 6 SO BOURDIER WOULD GET 10 PERCENT OF THE  
10:08:38 7 PROFITS AND THE DEVELOPMENT WORK OF THE HOTEL IN  
10:08:42 8 WAIKIKI AND WHAT HCHC WOULD GET IS ALLEGEDLY  
10:08:51 9 10 PERCENT OF THE ART MAINLY AND THEN THE MORE  
10:08:55 10 ATTRACTIVE SECURITIES OFFERING.

10:08:56 11 Q BECAUSE IT WOULD BE MORE DIVERSIFIED?

10:08:58 12 A MORE DIVERSIFIED, YES.

10:09:00 13 Q OKAY. I'M GOING TO SHOW YOU A DOCUMENT THAT  
10:09:25 14 HAS ALREADY BEEN ADMITTED INTO EVIDENCE. THAT'S  
10:09:27 15 GOVERNMENT'S EXHIBIT 115.

10:09:29 16 FIRST OF ALL, SIR, DO YOU SEE THAT  
10:09:32 17 DOCUMENT?

10:09:32 18 A I DO.

10:09:32 19 Q AND I'M GOING TO DISPLAY THE FIRST PAGE OF  
10:09:35 20 EXHIBIT 115 ON THE ELMO.

10:09:38 21 DO YOU RECOGNIZE THAT DOCUMENT?

10:09:39 22 A YES.

10:09:39 23 Q AND THIS IS THE MUTUAL ASSIGNMENT OF SHARES?

10:09:43 24 A YES.

10:09:43 25 Q AND THAT'S YOUR SIGNATURE AT THE -- ABOUT



10:09:48 1 MIDWAY DOWN FROM THE DOCUMENT?

10:09:50 2 A YES.

10:09:50 3 Q AND THERE'S ANOTHER ONE OF YOUR SIGNATURES  
10:09:58 4 BELOW?

10:09:59 5 A YES.

10:09:59 6 Q AND WHO PREPARED THIS DOCUMENT?

10:10:00 7 A I DID.

10:10:01 8 Q AND DID YOU PREPARE THIS WHILE YOU WERE AT  
10:10:05 9 PROFESSOR BOURDIER'S HOME?

10:10:07 10 A YES, IT WAS ACTUALLY PRINTED OUT ON SAM FUNG'S  
10:10:09 11 COMPUTER, PORTABLE PRINTER.

10:10:12 12 Q OKAY. AND IS THIS THE -- AND WHAT THIS  
10:10:18 13 DOCUMENT DID WAS EFFECTUATE THE EXCHANGE OF 100  
10:10:21 14 SHARES FOR 100 SHARES; RIGHT?

10:10:24 15 A CORRECT.

10:10:25 16 Q WHAT ELSE DID YOU DO -- OH, I'M SORRY. AND  
10:10:38 17 DID YOU ALSO SEE PROFESSOR BOURDIER SIGN 115?

10:10:43 18 A I DID AND THE SAME WITH HIS WIFE.

10:10:45 19 Q AND, NOW, WHAT ELSE DID YOU DO WHEN YOU WERE  
10:10:47 20 THERE IN TERMS OF DOCUMENT? DID YOU PREPARE ANY  
10:10:49 21 OTHER DOCUMENTS?

10:10:50 22 A NO, BUT I SIGNED ONE.

10:10:59 23 Q NOW, I'M GOING TO SHOW YOU WHAT HAS BEEN  
10:11:01 24 ADMITTED INTO EVIDENCE ALREADY AS GOVERNMENT'S  
10:11:05 25 EXHIBIT 116 -- 118 -- EXCUSE ME.

10:11:29 1 FIRST OF ALL, SIR, DO YOU SEE THAT

10:11:31 2 DOCUMENT IN FRONT OF YOU?

10:11:32 3 A I DO, I DO.

10:11:35 4 Q AND DIRECTING YOUR ATTENTION TO THE SECOND  
10:11:37 5 PAGE OF GOVERNMENT'S EXHIBIT 118. IT'S THE -- IT  
10:11:42 6 APPEARS TO BE THE FIRST PAGE OF A 2002 U.S.  
10:11:47 7 CORPORATION INCOME TAX RETURN FOR HEART MIND  
10:11:50 8 CORPORATION.

10:11:50 9 DO YOU SEE THAT, SIR?

10:11:51 10 A YES.

10:11:52 11 Q AND I'M GOING TO DIRECT YOUR ATTENTION --  
10:11:56 12 WELL, FIRST OF ALL, YOU HAVE SEEN THIS DOCUMENT  
10:11:58 13 BEFORE, RIGHT?

10:11:58 14 A YES.

10:11:59 15 Q OKAY. AND LET ME DIRECT YOUR ATTENTION TO THE  
10:12:05 16 SIGNATURE THAT IS JUST TO THE RIGHT OF PREPARER'S  
10:12:09 17 USE ONLY.

10:12:10 18 DO YOU SEE THAT?

10:12:11 19 A YES.

10:12:11 20 Q OKAY. AND IT APPEARS TO BE A SIGNATURE BELOW  
10:12:18 21 THE WRITTEN -- THE PRINTED WORDS OF HAWAIIN COLONY  
10:12:24 22 HOTEL CORP. DO YOU SEE THAT?

10:12:25 23 A YES.

10:12:25 24 Q AND IT HAS THE WORD "BY," B-Y, RIGHT?

10:12:30 25 A YES.

10:12:31 1 Q AND THEN THE NAME, THE SIGNATURE TO THE RIGHT  
10:12:33 2 OF IT, CAN YOU MAKE OUT THAT SIGNATURE?  
10:12:36 3 A I CAN SEE WHAT IT SAYS, BUT I --  
10:12:41 4 Q WELL, FIRST OF ALL, WHAT DO YOU THINK IT SAYS?  
10:12:43 5 WHAT DOES IT APPEAR TO BE?  
10:12:45 6 A IT PURPORTS TO BE MY SIGNATURE.  
10:12:47 7 Q ERIC LIGHTER?  
10:12:48 8 A YES.  
10:12:48 9 Q OKAY. DID YOU -- IS THIS -- DID YOU SIGN THIS  
10:12:51 10 DOCUMENT?  
10:12:51 11 A NO.  
10:12:52 12 Q OKAY. AND DIRECTING YOUR ATTENTION TO THE  
10:12:56 13 DATE ON THE RIGHT OF IT 10-29-2003. DO YOU SEE  
10:13:00 14 THAT?  
10:13:01 15 A YES.  
10:13:01 16 Q AND WHERE WERE YOU ON OCTOBER 29TH, 2003?  
10:13:06 17 A TEN DAYS PRIOR TO THIS DATE I WAS IN HAWAII.  
10:13:13 18 Q SO YOU WERE ALREADY BACK IN HAWAII AT THE  
10:13:15 19 TIME?  
10:13:15 20 A CORRECT, CORRECT.  
10:13:17 21 Q NOW, I WANT TO DIRECT YOUR ATTENTION TO A HAND  
10:13:20 22 PRINTED DATE ABOVE THE SIGNATURE THAT WE JUST  
10:13:25 23 LOOKED AT. IT'S JUST TO THE RIGHT OF "SIGN HERE."  
10:13:31 24 DO YOU SEE THAT?  
10:13:32 25 A YES.

10:13:32 1 Q OKAY. AND IT HAS THE HANDWRITTEN DATE APPEARS  
10:13:37 2 TO BE NOVEMBER 5TH, 2003.

10:13:40 3 A YES.

10:13:40 4 Q OKAY. NOW, WHERE WERE YOU ON NOVEMBER 5TH,  
10:13:46 5 2003, IF YOU HAPPEN TO KNOW?

10:13:49 6 A HAWAII. I WAS IN HAWAII ON OCTOBER 19TH FROM  
10:13:56 7 THE 20TH THROUGH DECEMBER 17TH, 2004. OVER A YEAR.

10:14:05 8 Q NOW, HAVE YOU SEEN -- WHEN YOU WERE AT  
10:14:08 9 PROFESSOR BOURDIER'S HOUSE, DID YOU SEE THE  
10:14:11 10 DOCUMENT THAT IS GOVERNMENT'S EXHIBIT 118?

10:14:13 11 A NO, I NEVER HEARD THE NAME OF HEART MIND --

10:14:18 12 Q OKAY.

10:14:21 13 A -- BACK THEN.

10:14:22 14 Q OKAY. NOW, DIRECTING YOUR ATTENTION TO THE  
10:14:24 15 NAME OF THE ENTITY THAT IS FILING THE RETURN. YOU  
10:14:30 16 JUST TESTIFIED THAT YOU HAD NOT HEARD THE NAME  
10:14:32 17 HEART MIND CORPORATION BEFORE THEY WERE AT  
10:14:34 18 PROFESSOR BOURDIER'S HOUSE.

10:14:36 19 NOW, LET ME DIRECT YOUR ATTENTION TO THE  
10:14:40 20 COLUMN, OR THE BOX I SHOULD SAY, BOX B AS IN BOY.

10:14:43 21 IT'S THE EMPLOYER IDENTIFICATION NUMBER.  
10:14:46 22 AND IT HAS A PRINTED NUMBER 87-0711919.

10:14:57 23 FIRST OF ALL, DO YOU SEE THAT ENTRY, SIR?

10:14:59 24 A YES, YES, I DO.

10:15:02 25 Q AND DID YOU SEE THIS EIN AT ANY TIME WHEN YOU

10:15:09 1 WERE AT PROFESSOR BOURDIER'S HOUSE?

10:15:10 2 A NO, NO.

10:15:11 3 Q OKAY. DID ANYBODY TELL YOU THAT PROFESSOR  
10:15:16 4 BOURDIER'S COMPANY, REGARDLESS OF HIS HEART OR  
10:15:20 5 HEART MIND OR WHATEVER, HAD ALREADY ACQUIRED AN  
10:15:23 6 EIN?

10:15:24 7 A ON THE CONTRARY. THEY SAID THERE WAS NO EIN.

10:15:30 8 Q OKAY. NOW, DIRECTING YOUR ATTENTION TO PAGE 8  
10:15:40 9 OF EXHIBIT 118.

10:15:47 10 DO YOU SEE THAT, SIR?

10:15:48 11 A I DO.

10:15:49 12 Q NOW, IT'S -- IT HAS THE TITLE INVENTORY OF  
10:15:55 13 HEART CORPORATION. DO YOU SEE THAT?

10:15:57 14 A CORRECT.

10:15:57 15 Q NOW, FIRST OF ALL, DO YOU RECOGNIZE THIS  
10:16:00 16 PARTICULAR PAGE WITH THE INVENTORY OF HEART  
10:16:04 17 CORPORATION THAT IS PAGE 8 OF EXHIBIT 118?

10:16:09 18 A IT LOOKS LIKE IT IS, YES.

10:16:11 19 Q OKAY. I COULD NOT HEAR YOU.

10:16:14 20 A I RECOGNIZE IT, YES.

10:16:15 21 Q OKAY. SO YOU RECOGNIZE IT. AND WHAT DO YOU  
10:16:19 22 RECOGNIZE IT AS?

10:16:22 23 A THE INVENTORY OF HEART CORPORATION, NOT HEART  
10:16:25 24 MIND.

10:16:25 25 Q AND IS THIS THE INVENTORY LIST THAT YOU AND

10:16:29 1 PROFESSOR BOURDIER PUT TOGETHER?

10:16:30 2 A YES, AND LOOKING BACK IT WAS NOT VERY WELL  
10:16:33 3 DONE BUT THAT'S THE LIST.

10:16:33 4 Q OKAY. NOW, DIRECTING YOUR ATTENTION AGAIN TO  
10:16:42 5 SPECIFICALLY PAGE 2 OF EXHIBIT 118. OKAY.

10:16:45 6 AND JUST THIS PAGE, DO YOU SEE THAT, SIR?

10:16:47 7 A YES.

10:16:48 8 Q OKAY. AND YOU SEE THERE ARE NUMBERS ON THE  
10:16:53 9 RIGHT-HAND COLUMN, FOR EXAMPLE, ON LINE 10 THERE'S  
10:16:57 10 THE NUMBER OF \$10,000, AND LINE 11, \$10,000, AND  
10:17:03 11 LINE 15, \$302,000.

10:17:07 12 DO YOU SEE THOSE NUMBERS?

10:17:08 13 A YES.

10:17:08 14 Q OKAY. NOW, DID YOU EVER -- AGAIN, WELL, LET  
10:17:14 15 ME ASK YOU, DID YOU PREPARE ANY PART OF  
10:17:21 16 EXHIBIT 118, IN PARTICULAR, THIS PARTICULAR PAGE OF  
10:17:25 17 EXHIBIT 118, PAGE 2?

10:17:27 18 A NO.

10:17:27 19 Q AND NOW, DID YOU EVER PREPARE, WHILE YOU WERE  
10:17:29 20 AT PROFESSOR BOURDIER'S HOUSE, DID YOU EVER PREPARE  
10:17:32 21 ANY DOCUMENT THAT IS SIMILAR TO PAGE 2 OF  
10:17:36 22 EXHIBIT 118?

10:17:36 23 A SAM FUNG'S PRINTOUT ON HIS PORTABLE COMPUTER A  
10:17:44 24 SIMILAR DRAFT TAX RETURN, PARTIAL TAX RETURN FOR  
10:17:49 25 HEART CORPORATION.

10:17:51 1 Q OKAY. AND WOULD THAT BE FOR WHAT YEAR?

10:17:54 2 A THE SAME NUMBERS.

10:17:56 3 Q ALL RIGHT. OKAY.

10:18:02 4 NOW, DID YOU -- THIS DOCUMENT THAT SAM  
10:18:04 5 FUNG PREPARED, OKAY, FIRST OF ALL, LET ME JUST FOR  
10:18:09 6 IDENTIFICATION PURPOSES I'VE PUT IN FRONT OF YOU A  
10:18:37 7 TWO-PAGE DOCUMENT THAT HAS BEEN MARKED FOR  
10:18:40 8 IDENTIFICATION ONLY AS DEFENDANT'S G AS IN GARY.

10:18:43 9 DO YOU SEE THAT, SIR?

10:18:44 10 A I DO.

10:18:45 11 Q AND HAVE YOU SEEN THIS DOCUMENT BEFORE TODAY?

10:18:49 12 A YES.

10:18:49 13 Q AND WHAT IS THE DOCUMENT THAT YOU HAVE IN  
10:18:56 14 FRONT OF YOU AS EXHIBIT G?

10:18:57 15 A IT'S THE DRAFT, TWO PAGES OF THE INCOMPLETE  
10:19:01 16 HEART CORPORATION RETURN PREPARED AND IT'S SIGNED  
10:19:06 17 IN DRAFTS ON OCTOBER 19TH, 2003.

10:19:10 18 Q NOW, I WANT TO DIRECT YOUR ATTENTION TO THE  
10:19:14 19 BOTTOM OF THE FIRST PAGE OF EXHIBIT G AS IN GARY TO  
10:19:20 20 THE RIGHT OF THE BOX WHERE IT LEADS "PAID  
10:19:23 21 PREPARER'S USE ONLY."

10:19:27 22 AND THEN TO THE RIGHT OF THERE THERE'S A  
10:19:29 23 PREPARER'S SIGNATURE. DO YOU SEE WHERE I'M  
10:19:32 24 REFERRING TO, SIR?

10:19:33 25 A YES, I DO.

10:19:33 1 Q OKAY. TO THE RIGHT OF IT APPEARS TO BE A  
10:19:36 2 SIGNATURE. AND ABOVE THAT SIGNATURE I SEE THE  
10:19:42 3 WORD, THE PRINTED WORD HAWAIIN COLONY HOTEL  
10:19:45 4 CORPORATION.

10:19:45 5 DO YOU SEE WHAT I'M REFERRING TO?

10:19:47 6 A YES, I DO.

10:19:48 7 Q OKAY. NOW, WHOSE SIGNATURE IS THAT?

10:19:51 8 A THAT'S MINE.

10:19:51 9 Q OKAY. AND DID YOU SIGN THAT THIS -- DID YOU  
10:19:56 10 SIGN YOUR SIGNATURE, DID YOU SIGN THE SIGNATURE  
10:20:02 11 THAT IS SHOWN ON EXHIBIT G?

10:20:03 12 A I DID.

10:20:04 13 Q OKAY. AND WHEN DID YOU SIGN IT?

10:20:06 14 A OCTOBER 19TH.

10:20:09 15 Q WHAT YEAR?

10:20:10 16 A 2003.

10:20:11 17 Q AND WHERE DID YOU SIGN IT?

10:20:12 18 A IN BOURDIER'S LIVING ROOM.

10:20:15 19 Q OKAY. NOW, ABOVE YOUR SIGNATURE ON EXHIBIT G,  
10:20:21 20 NOT EXHIBIT 118, BUT EXHIBIT G, THERE'S A "SIGN  
10:20:28 21 HERE" SIGNATURE. DO YOU SEE THAT?

10:20:31 22 A I DO.

10:20:32 23 Q AND DO YOU RECOGNIZE THAT SIGNATURE?

10:20:33 24 A I DO.

10:20:34 25 Q AND WHOSE SIGNATURE IS THAT?



10:20:35 1 A JEAN-PAUL BOURDIER.

10:20:36 2 Q AND DID YOU SEE PROFESSOR BOURDIER SIGN THAT  
10:20:41 3 SIGNATURE?

10:20:41 4 A I DID.

10:20:42 5 Q OKAY. AND I'M SORRY. I'M PAUSING A LITTLE.  
10:20:45 6 PLEASE LET ME FINISH MY QUESTION BEFORE YOU ANSWER.  
10:20:48 7 OKAY.

10:20:49 8 NOW, TO THE RIGHT OF THE SIGNATURE THAT  
10:20:55 9 YOU JUST TESTIFIED THAT YOU BELIEVED WAS PROFESSOR  
10:20:58 10 BOURDIER'S THERE'S A HANDWRITTEN DATE.

10:21:01 11 DO YOU SEE THAT?

10:21:02 12 A YES.

10:21:02 13 Q AND WHAT IS THE HANDWRITTEN DATE THAT IS SHOWN  
10:21:05 14 ON THE FIRST PAGE OF EXHIBIT G?

10:21:07 15 A OCTOBER 19TH, '03.

10:21:10 16 Q OKAY. NOW, THERE ARE -- ON THE FIRST -- ON  
10:21:14 17 THE UPPER RIGHT-HAND CORNER OF EXHIBIT G DO YOU SEE  
10:21:21 18 SOME HANDWRITING?

10:21:22 19 A I DO.

10:21:23 20 Q OKAY. FIRST OF ALL, I DON'T WANT YOU TO YET  
10:21:26 21 TESTIFY AS TO THE CONTENT OF THOSE WRITINGS, BUT,  
10:21:29 22 FIRST OF ALL, DO YOU RECOGNIZE THOSE HANDWRITINGS?

10:21:33 23 A IT'S MY HANDWRITING.

10:21:34 24 Q OKAY. AND THERE ARE ALSO SOME HANDWRITING  
10:21:43 25 WITH ARROWS POINTING TOWARDS THE RIGHT-HAND COLUMN

10:21:46 1

OF EXHIBIT G. DO YOU SEE THAT?

10:21:50 2

A YEAH, I DO.

10:21:51 3

Q AND WHOSE HANDWRITING IS THAT?

10:21:52 4

A THAT'S MINE AND THOSE ARE MY ARROWS.

10:21:54 5

Q OKAY. AND DIRECTING YOUR ATTENTION TO PAGE 2

10:22:00 6

OF EXHIBIT G. DO YOU SEE THAT, SIR?

10:22:02 7

A YES.

10:22:14 8

Q OKAY. DESCRIBE IN GENERAL, WITHOUT GETTING

10:22:16 9

INTO ANY SPECIFIC CONTENTS, WHAT DO YOU SEE ON PAGE

10:22:20 10

2 OF EXHIBIT G?

10:22:23 11

A IT'S A LIST OF HEART MIND SUBSIDIARIES.

10:22:26 12

Q HEART MIND?

10:22:30 13

A HEART CORPORATION'S SUBSIDIARIES.

10:22:33 14

Q AND IS THERE ANY HANDWRITING ON THE SECOND

10:22:36 15

PAGE OF EXHIBIT G?

10:22:37 16

A TWO LINES.

10:22:37 17

Q OKAY. AND THE FIRST LINE, PLEASE DESCRIBE

10:22:47 18

WHERE ON THAT PAGE IT APPEARS?

10:22:48 19

A THE HEADING.

10:22:48 20

Q OKAY. THERE ARE SOME PRESENTED WORDS ON

10:22:56 21

EXHIBIT G, PAGE 2 OF EXHIBIT G?

10:22:58 22

A YES.

10:22:58 23

Q AND, IN FACT, THERE'S A LAST SENTENCE OR

10:23:01 24

PARAGRAPH KIND OF ABOUT A LITTLE MORE THAN HALFWAY

10:23:04 25

DOWN FROM THE TOP OF THE PAGE; IS THAT CORRECT?

10:23:06 1 A YES, IT'S ACTUALLY SCRIPT.

10:23:13 2 Q OKAY. BUT -- I'M SORRY. THERE ARE  
10:23:15 3 TYPEWRITTEN WORDS THAT ABOUT TWO-THIRDS -- ABOUT  
10:23:20 4 TWO-THIRDS OF THE WAY DOWN FROM THE TOP OF THE  
10:23:23 5 PAGE; IS THAT CORRECT?

10:23:24 6 A YES.

10:23:24 7 Q AND TO THE RIGHT OF IT IS SOME HANDWRITING,  
10:23:27 8 RIGHT?

10:23:27 9 A YES.

10:23:27 10 Q AND DO YOU RECOGNIZE THE HANDWRITING?

10:23:29 11 A THAT'S MY HANDWRITING.

10:23:32 12 MR. FONG: YOUR HONOR, I'M GOING TO MOVE  
10:23:33 13 INTO EVIDENCE DEFENDANT'S EXHIBIT G.

10:23:36 14 MS. WONG: OBJECTION, HEARSAY.

10:23:38 15 THE COURT: ALL RIGHT. WE'LL TAKE OUR  
10:23:39 16 MORNING RECESS, FOLKS. WE'LL TAKE ABOUT  
10:23:42 17 12 MINUTES. THANK YOU. WE'LL BE IN RECESS. YOU  
10:23:44 18 MAY STAND DOWN, SIR.

10:37:36 19 (WHEREUPON, A RECESS WAS TAKEN.)

10:37:37 20 THE COURT: WE'RE BACK ON THE RECORD.  
10:37:38 21 OUR JURORS AND ALTERNATES ARE PRESENT. THE  
10:37:40 22 DEFENDANT IS ON THE STAND. ALL COUNSEL ARE  
10:37:43 23 PRESENT.

10:37:43 24 AND LET'S SEE, THERE WAS A HEARSAY  
10:37:47 25 OBJECTION I THINK AS TO G?

10:37:50 1 MR. FONG: YES, YOUR HONOR.

10:37:51 2 THE COURT: ANY RESPONSE?

10:37:52 3 MR. FONG: YES, YOUR HONOR. IT'S NOT  
10:37:56 4 OFFERED FOR THE TRUTH OF THE MATTER ASSERTED, JUST  
10:37:58 5 THAT MR. LIGHTER WROTE CERTAIN WORDS AND ADAPT  
10:38:02 6 THOSE WORDS TO PROVIDE NOTICE TO MR. FUNG AND  
10:38:08 7 MR. BOURDIER. IT'S NOTICE, YOUR HONOR.

10:38:09 8 IT IS NOT A MATTER OF TRUTH OF THE MATTER  
10:38:12 9 ASSERTED.

10:38:16 10 THE WORDS THAT MR. LIGHTER WROTE PUT  
10:38:19 11 MR. FUNG AND MR. BOURDIER ON NOTICE.

10:38:21 12 THE COURT: WELL, THAT'S -- ISN'T THAT  
10:38:25 13 SUBJECT TO ARGUMENT? ISN'T THAT -- ARE YOU ASKING  
10:38:28 14 THAT THIS BE ADMITTED FOR NOTICE PURPOSES AS YOU  
10:38:31 15 SAY, WOULDN'T THAT BE FOR THE TRUTH OF THE MATTER  
10:38:34 16 ASSERTED, NOT NECESSARILY THE WRITINGS BUT FOR THE  
10:38:37 17 PURPOSE?

10:38:40 18 MR. FONG: YOUR HONOR, I BELIEVE THAT THE  
10:38:44 19 DOCUMENT IS ABSOLUTELY ADMISSIBLE.

10:38:46 20 IT CERTAINLY --

10:38:48 21 THE COURT: WELL, YOU JUST TOLD ME THAT  
10:38:49 22 YOU WERE ASKING FOR IT TO BE ADMITTED, NOT FOR THE  
10:38:53 23 TRUTH OF THE MATTER ASSERTED.

10:38:54 24 MR. FONG: RIGHT. BUT THE FACT THAT  
10:38:56 25 MR. FUNG AND MR. BOURDIER HAD BEEN PLACED ON NOTICE

10:39:00 1 AS TO WHAT IS GOING ON.

10:39:05 2 THE COURT: WELL, I DON'T THINK THERE'S  
10:39:07 3 ANY FOUNDATIONAL EVIDENCE OF THAT OTHER THAN WHAT  
10:39:13 4 OCCURRED DURING FOUNDATION.

10:39:16 5 SO YOU'RE ASKING FOR AN INTERPRETATION  
10:39:18 6 THAT YOU MIGHT ARGUE, I SUPPOSE.

10:39:20 7 BUT IF YOU'RE ASKING THAT THIS BE  
10:39:22 8 ADMITTED FOR NOTICE, THAT GIVES AN IMPRIMATUR THAT  
10:39:26 9 IT IS NOTICE.

10:39:29 10 MR. FONG: WELL, BUT WITHOUT THE DOCUMENT  
10:39:30 11 BEING ADMITTED, THERE IS NO EVIDENCE.

10:39:35 12 THE COURT: WELL, I UNDERSTAND. RIGHT  
10:39:37 13 NOW WE'RE HAVING COLLOQUY ABOUT WHETHER OR NOT THE  
10:39:41 14 DOCUMENT SHOULD COME IN.

10:39:42 15 AND YOU'RE ASKING THAT IT SHOULD NOT COME  
10:39:45 16 IN FOR THE TRUTH OF THE MATTER ASSERTED IN THE  
10:39:47 17 DOCUMENT.

10:39:47 18 MR. FONG: YOUR HONOR, I BELIEVE THAT IT  
10:39:49 19 CAN COME IN FOR A VARIETY OF REASONS: FIRST OF  
10:39:52 20 ALL, FOR COMPLETENESS BECAUSE 118 IS ALREADY IN,  
10:39:55 21 THIS DOCUMENT.

10:39:59 22 MR. O'REILLY: EXCUSE ME, YOUR HONOR. I  
10:40:01 23 APOLOGIZE, BUT COULD WE TAKE THIS UP AT THE  
10:40:03 24 SIDE-BAR?

10:40:03 25 THE COURT: YES. THANK YOU. FOLKS,

10:40:05 1 WE'LL HAVE A SIDE-BAR CONVERSATION. FOLKS, YOU CAN  
10:40:07 2 STAND IF YOU WISH.

10:40:08 3 (SIDE-BAR CONFERENCE ON THE RECORD.)

10:49:51 4 THE COURT: OKAY. WE'RE AT SIDE-BAR  
10:49:51 5 OUTSIDE OF THE PRESENCE OF THE JURY.

10:49:51 6 SO MY CONCERN IS THAT, MR. FONG, YOU SAID  
10:49:51 7 THAT YOU'RE ASKING IT TO COME IN NOT FOR THE TRUTH  
10:49:51 8 OF THE MATTER ASSERTED.

10:49:51 9 DOES THAT MEAN NONE OF THE WRITINGS OR  
10:49:52 10 THE WORDS?

10:49:52 11 MR. FONG: IT CAN COME IN ON THREE  
10:49:52 12 DIFFERENT BASES. IT CAN COME IN ON COMPLETENESS.  
10:49:52 13 118 IS IN. THIS IS THE DRAFT TO 118.

10:49:52 14 TWO, IT COMES IN UNDER 807 BECAUSE IT  
10:49:52 15 CERTAINLY -- WHAT MR. LIGHTER TESTIFIED TO GIVES IT  
10:49:52 16 RELIABILITY IN TERMS OF HOW CLOSE IN TIME -- IN  
10:49:52 17 FACT, IT BEARS SIGNATURES ON DATES IN WHICH WE HAVE  
10:49:52 18 I THINK EVERYBODY AGREES THAT WHEN EVERYBODY WAS  
10:49:52 19 PRESENT AS OPPOSED TO EXHIBIT 118.

10:49:52 20 AND THEN, FINALLY, IF NOTHING ELSE, IT  
10:49:52 21 COMES IN BECAUSE IT PUTS MR. BOURDIER AND MR. FUNG  
10:49:52 22 ON NOTICE AS TO WHAT THEY WERE SUPPOSED TO DO.

10:49:52 23 THE COURT: I THINK AS TO THE LATTER ONE  
10:49:52 24 THAT'S NOT REALLY RELEVANT. I THINK YOU'RE ASKING  
10:49:52 25 FOR TOO MUCH. WHETHER OR NOT IT PUTS THEM ON

10:49:52 1 NOTICE IS A QUESTION OF FACT. YOU CAN ARGUE, BUT  
10:49:52 2 THIS -- BOTH SIDES CAN ARGUE.

10:49:52 3 MR. FONG: BUT THIS DOESN'T COME IN.

10:49:52 4 THE COURT: WELL, LET ME GO BACK TO THE  
10:49:52 5 TWO OTHER POINTS, AND I'LL ASK THE GOVERNMENT TO  
10:49:52 6 RESPOND NOW.

10:49:52 7 THIS WITNESS HAS, IN REGARDS TO  
10:49:52 8 RELIABILITY, THIS WITNESS HAS NOW INDICATED AND  
10:49:52 9 INDICATES THAT THESE MARKS ARE HIS AND THAT THEY'RE  
10:49:52 10 HIS WRITING.

10:49:52 11 SO IN ONE SENSE THAT DOES, AS TO THE  
10:49:52 12 DOCUMENT, THAT DOES RESOLVE ANY TRUSTWORTHINESS OR  
10:49:52 13 RELIABILITY TYPE ISSUE IN REGARDS TO THE WRITING.

10:49:52 14 SO IT MIGHT OTHERWISE BE ADMISSIBLE BASED  
10:49:52 15 ON THAT FACT.

10:49:52 16 DO YOU WANT TO RESPOND TO THAT?

10:49:52 17 MR. O'REILLY: YES, YOUR HONOR. THIS IS  
10:49:52 18 A SUGGESTION THAT WE HAVE HAD SEVERAL TIMES ALREADY  
10:49:52 19 ABOUT THIS VERY DOCUMENT.

10:49:52 20 THERE'S NO ISSUE. THE DEFENDANT WROTE  
10:49:52 21 THESE. HOWEVER -- I APOLOGIZE -- WITHOUT  
10:49:52 22 MISREPRESENTATION, JEAN-PAUL ASKED WHETHER THIS WAS  
10:49:52 23 ON HERE AND HE SAID HE DIDN'T REMEMBER SEEING IT  
10:49:52 24 AND IT DEFIES LOGIC, YOU DON'T SIGN A DRAFT  
10:49:52 25 DOCUMENT AND THEN YOU DON'T SIGN AND THEN SAY

10:49:52 1           SOMEBODY ELSE YOU NEED A SIGNATURE FOR THE  
10:49:52 2           PREPARER.

10:49:52 3           THE COURT:   WELL, THAT GOES TO, I  
10:49:52 4           SUPPOSE, THE WEIGHT OF THIS DOCUMENT IF IT'S  
10:49:52 5           ADMITTED.

10:49:52 6           NOW, I SHOULD TELL YOU THAT I'M NOT SURE  
10:49:52 7           THERE'S ENOUGH FOUNDATION YET BASED ON WE DO HAVE  
10:49:52 8           BOURDIER SAYING HE DOESN'T REMEMBER SEEING THIS AND  
10:49:52 9           WHETHER THAT MEANS IT'S THERE OR NOT I DON'T KNOW,  
10:49:52 10          HE JUST DOESN'T REMEMBER.

10:49:52 11          MR. O'REILLY:   BUT, YOUR HONOR, IT IS  
10:49:52 12          HEARSAY.   IT IS AN OUT-OF-COURT STATEMENT OFFERED  
10:49:52 13          AND THE ONLY PURPOSE IS FOR ITS TRUTH THAT THESE  
10:49:52 14          STATEMENTS WERE MADE TO MR. BOURDIER AND MR. FUNG.  
10:49:52 15          THAT'S THE TRUTH.   IT'S TRIED TO BE PUT IN THROUGH  
10:49:52 16          THIS DOCUMENT.

10:49:52 17          THE COURT:   THERE'S NO --

10:49:52 18          MR. O'REILLY:   BUT HE'S SAYING I GAVE HIM  
10:49:52 19          A DOCUMENT THAT SHOWED THAT THINGS THAT HE NEEDED  
10:49:52 20          TO DO.   WE'RE NOT GOING TO OBJECT TO HIM TESTIFYING  
10:49:52 21          ABOUT IT.   THIS DOCUMENT ITSELF, HOWEVER, IS  
10:49:52 22          HEARSAY.

10:49:52 23          THE COURT:   OKAY.   ANY RESPONSE TO THAT?

10:49:52 24          MR. FONG:   YOUR HONOR, AS A DISTINCTIONAL  
10:49:52 25          DIFFERENCE, MR. LIGHTER CAN CERTAINLY TESTIFY TO



10:49:52 1 THE FACT THAT HE WROTE THESE WORDS ON THERE, BUT,  
10:49:52 2 AGAIN, IN TERMS OF COMPLETENESS, WHY IS IT THAT THE  
10:49:52 3 JURORS ARE ALLOWED TO SEE 118 BUT NOT EXHIBIT G?

10:49:52 4 THE COURT: BECAUSE THERE'S AN OBJECTION  
10:49:52 5 NOW AND THAT'S WHAT WE'RE TALKING ABOUT WHETHER OR  
10:49:52 6 NOT YOU CAN OVERCOME THE HEARSAY OBJECTION.

10:49:52 7 MR. FONG: BUT, YOUR HONOR, UNDER 807  
10:49:52 8 THIS DOCUMENT HAS A GREAT DEGREE OF RELIABILITY.

10:49:52 9 THE GOVERNMENT CAN CERTAINLY  
10:49:52 10 CROSS-EXAMINE MR. LIGHTER ABOUT IT AND ASK HIM  
10:49:52 11 WHETHER OR NOT HE ACTUALLY WROTE THESE THINGS.

10:49:52 12 BUT IN TERMS OF RELIABILITY, IT ALMOST  
10:49:52 13 MIRRORS -- IT DOES LOOK LIKE A DRAFT OF 118.

10:49:52 14 THE COURT: WELL, THAT'S YOUR OPINION. I  
10:49:52 15 MEAN, THAT'S WHAT -- IF YOU'RE GOING ADMIT THIS TO  
10:49:52 16 SAY THIS IS A DRAFT, THEN I DON'T THINK IT'S  
10:49:52 17 ADMISSIBLE.

10:49:52 18 YOUR CLIENT CAN TESTIFY TO WHATEVER HE  
10:49:52 19 WANTS OR WHATEVER HIS BELIEF IS. HE CAN TESTIFY  
10:49:52 20 ABOUT WHEN THESE ITEMS WERE PUT ON THERE, WHETHER  
10:49:52 21 OR NOT IT WAS IN THE SENSE OF THESE OTHER PARTIES  
10:49:52 22 OR NOT AND THE JURY IS GOING TO BELIEVE HIM OR NOT  
10:49:52 23 BELIEVE HIM AND IT'S GOING TO GO TO HIS  
10:49:52 24 CREDIBILITY.

10:49:52 25 BUT YOU TOLD ME EARLIER THAT YOU'RE

10:49:52 1 ASKING THAT IT BE ADMITTED NOT FOR THE TRUTH OF THE  
10:49:52 2 MATTER ASSERTED.

10:49:52 3 MR. FONG: I BELIEVE IT CAN COME IN, LIKE  
10:49:52 4 I SAID, ON THREE DIFFERENT BASES, YOUR HONOR. ONE  
10:49:52 5 IS THAT IT PUTS THEM ON NOTICE BECAUSE EVEN IF THE  
10:49:52 6 WORDS --

10:49:52 7 THE COURT: I GUESS I DON'T UNDERSTAND  
10:49:52 8 THE NOTICE EXCEPTION.

10:49:52 9 MR. FONG: WELL, YOUR HONOR, IF I SAY  
10:49:52 10 THAT, YOU KNOW, IF I SAY THAT I HAD A MILLION  
10:49:52 11 DOLLARS IN MY POCKET RIGHT NOW TO YOU, YOU ARE ON  
10:49:52 12 NOTICE THAT I SAID THAT, NOT THAT IT IS -- NOT THAT  
10:49:52 13 I NECESSARILY HAVE A MILLION DOLLARS IN MY POCKET.

10:49:52 14 SO THAT LATER ON, IF THE ISSUE COMES UP  
10:49:52 15 DID MR. FONG EVER TELL YOU HE HAD A MILLION DOLLARS  
10:49:54 16 IN YOUR POCKET, YOUR ANSWER WOULD BE, YES, HE TOLD  
10:49:54 17 ME THAT. YOU MAY NOT BELIEVE HIM.

10:49:54 18 THE COURT: BUT AS MR. O'REILLY SAYS, THE  
10:49:54 19 OTHER WITNESS SAYS HE DOESN'T REMEMBER THESE BEING  
10:49:54 20 ON HERE.

10:49:54 21 MR. FONG: YOUR HONOR, FIRST OF ALL,  
10:49:54 22 PROFESSOR BOURDIER DOESN'T REMEMBER ANYTHING, WHICH  
10:49:54 23 IS FINE.

10:49:54 24 MR. O'REILLY: OBJECTION, THAT'S A  
10:49:54 25 MISCHARACTERIZATION OF MR. BOURDIER.

10:49:54 1 MR. FONG: BUT THE POINT IS THAT  
10:49:54 2 MR. LIGHTER CAN TESTIFY THAT I PUT HIM ON THERE,  
10:49:54 3 AND THEN IT GOES TO THE CREDIBILITY WHETHER HE  
10:49:54 4 ACTUALLY DID.

10:49:54 5 THE COURT: I THINK HE TESTIFIED THAT HE  
10:49:54 6 WROTE THIS.

10:49:54 7 MR. FONG: RIGHT, AND I THINK THAT'S A  
10:49:54 8 SUFFICIENT FOUNDATION BUT THE JURORS DON'T KNOW YET  
10:49:54 9 WHAT IT IS THAT HE WROTE.

10:49:54 10 MR. O'REILLY: YOUR HONOR, IT'S PURE AND  
10:49:54 11 SIMPLE HEARSAY. IT'S THE DEFENDANT'S OWN STATEMENT  
10:49:54 12 OFFERED FOR THE TRUTH.

10:49:54 13 THE COURT: THERE'S NO QUESTION ABOUT IT  
10:49:54 14 THAT IT'S HEARSAY AND THE QUESTION NOW IS WHETHER  
10:49:54 15 THERE'S AN EXCEPTION THAT ALLOWS IT TO COME IN AND  
10:49:54 16 THAT'S THE PART WE'RE DISCUSSING HERE. IT IS  
10:49:54 17 HEARSAY. THERE'S NO QUESTION ABOUT IT.

10:49:54 18 MR. O'REILLY: I DON'T KNOW ANY  
10:49:54 19 EXCEPTION.

10:49:54 20 MR. FONG: WELL, IT'S A PRIOR  
10:49:54 21 INCONSISTENT STATEMENT AS TO HIS, AS TO -- IT'S  
10:49:54 22 801(D) EITHER (D)(2), YOUR HONOR, THAT PRIOR  
10:49:54 23 CONSISTENT STATEMENT BY MR. LIGHTER THAT TO PROVE  
10:49:54 24 THAT HE DIDN'T FABRICATE HIS REASONED TESTIMONY  
10:49:54 25 THAT HE HAD BEEN WARNING THESE PEOPLE AS TO WHAT

10:49:54 1           THEY SHOULD DO.

10:49:54 2                   THE COURT:    THAT REQUIRES AN ARGUMENT OF  
10:49:54 3           FABRICATION FIRST TO OVERCOME --

10:49:54 4                   MR. FONG:    BUT THAT'S THE GOVERNMENT'S  
10:49:54 5           CASE.

10:49:54 6                   THE COURT:    I DON'T KNOW IF THEY HAVE  
10:49:54 7           INDICATED THAT THERE'S FABRICATION.  THEY HAVEN'T  
10:49:54 8           PRESENTED THAT YET.  AND I HAVEN'T HEARD THAT THERE  
10:49:54 9           HAS BEEN EVIDENCE.

10:49:54 10                   IS THERE EVIDENCE THAT HE FABRICATED  
10:49:54 11           THIS?  AND I HAVEN'T HEARD.  IF THERE IS, TELL ME.

10:49:54 12                   MR. FONG:    WELL, IF THIS DOCUMENT IS TO  
10:49:54 13           REBUT THE CHARGES OF FABRICATION ABOUT WHETHER OR  
10:49:54 14           NOT MR. LIGHTER HAD BEEN WARNING THESE PEOPLE WHAT  
10:49:54 15           THEY SHOULD DO RELEVANT TO THE I.R.S.

10:49:54 16                   MR. O'REILLY:  YOUR HONOR, THIS KIND OF  
10:49:54 17           DOCUMENT SHOULD HAVE BEEN BROUGHT UP AT THE  
10:49:54 18           PRETRIAL CONFERENCE AND IT'S REQUIRED UNDER THE  
10:49:54 19           LOCAL RULES.

10:49:54 20                   THE COURT:    IT IS.

10:49:54 21                   WE SHOULD HAVE HAD THIS CONVERSATION, YOU  
10:49:54 22           KNOW, MR. FONG, AND THERE WAS NO PRETRIAL  
10:49:55 23           CONFERENCE STATEMENT PREPARED FROM THE DEFENSE SO  
10:49:55 24           NOW WE HAVE TO BRING THIS UP HERE.  I UNDERSTAND  
10:49:55 25           THIS IS NOT THE RIGHT PLACE AND RIGHT TIME AND I

10:49:55 1 DON'T KNOW WHAT HAPPENED THERE BUT HERE WE ARE  
10:49:55 2 DISCUSSING THIS.

10:49:55 3 ANYTHING ELSE YOU WANT ME TO KNOW?

10:49:55 4 MR. FONG: NO, YOUR HONOR.

10:49:55 5 MR. O'REILLY: NO, YOUR HONOR.

10:49:55 6 THE COURT: ALL RIGHT. LET ME JUST TELL  
10:49:55 7 YOU I AM INCLINED TO ADMIT IT AT THIS TIME AND I'LL  
10:49:55 8 ALLOW SOME EXAMINATION ON THIS AND I'M GOING TO --  
10:49:55 9 IT DOES -- THE RELIABILITY BASED ON THE FACT THAT  
10:49:55 10 HE IS HERE AND HE DID ADOPT THIS AND HE DID -- HE  
10:49:55 11 CAN TESTIFY ABOUT HIS WRITING ON HERE. THE  
10:49:55 12 GOVERNMENT CAN CROSS-EXAMINE HIM.

10:49:55 13 MR. O'REILLY: OKAY. BUT, YOUR HONOR,  
10:49:55 14 UNDER WHAT HEARSAY EXCEPTION IS IT BEING ADMITTED?

10:49:55 15 THE COURT: WELL, I'M LOOKING AT THIS  
10:49:55 16 UNDER I THINK IT'S 807 OR 801.

10:49:55 17 MR. FONG: 807.

10:49:55 18 THE COURT: WHERE THIS -- I'M FOCUSSED ON  
10:49:55 19 THE RELIABILITY OF THIS STATEMENT. HE'S TESTIFIED  
10:49:55 20 ABOUT IT AND HE'S ADOPTED THESE SIGNATURES AS HIS.

10:49:55 21 NOW, IS IT BEING OFFERED FOR THE TRUTH OF  
10:49:55 22 THE MATTER ASSERTED THAT THIS IS A DRAFT ONLY AND,  
10:49:55 23 NO, I'M NOT SUGGESTING THAT IT IS. BUT THE  
10:49:55 24 RELEVANCE OF IT IS THAT HE HAS INDICATED THAT THESE  
10:49:55 25 ARE HIS SIGNATURES, HE'S INDICATED THAT HE HAS HAD

10:49:55 1 TESTIMONY ABOUT WHAT HE THOUGHT HE WAS DOING IN  
10:49:55 2 THIS REGARD. THERE'S BEEN TESTIMONY ABOUT THAT.

10:49:55 3 MR. O'REILLY: OKAY, YOUR HONOR. I WOULD  
10:49:55 4 SAY WITH RESPECT TO THE RELIABILITY, I THINK WHAT  
10:49:55 5 IS VERY RELIABLE IS THAT HE PREPARED THIS AFTER THE  
10:49:55 6 FACT BECAUSE YOU DON'T SIGN A DRAFT DOCUMENT AS I  
10:49:55 7 INDICATED EARLIER, HE -- YOU DON'T SIGN THE  
10:49:55 8 DOCUMENT AS A PREPARER AND INDICATE SAM FUNG AS  
10:49:55 9 PREPARER. AND YOU DON'T INDICATE AN EIN.

10:49:55 10 THE COURT: I RECOGNIZE THAT AND THAT  
10:49:55 11 GOES TO THE WEIGHT OF THIS EVIDENCE, WHETHER OR NOT  
10:49:55 12 THE JURY IS GOING TO BELIEVE ANYTHING ON HERE AS TO  
10:49:55 13 THIS WITNESS.

10:49:55 14 MR. O'REILLY: I WILL REPRESENT TO THE  
10:49:55 15 COURT THAT WE WILL RECALL MR. LIGHTER TO TESTIFY  
10:49:56 16 ABOUT THIS.

10:49:56 17 THE COURT: ALL RIGHT. ANYTHING ELSE?

10:49:56 18 MR. FONG: NO.

10:49:56 19 (SIDE-BAR CONFERENCE CONCLUDED.)

10:49:56 20 THE COURT: ALL RIGHT. THANK YOU,  
10:49:58 21 COUNSEL. I'M GOING TO ADMIT G. G WILL BE ADMITTED  
10:50:01 22 AT THIS TIME.

10:50:02 23 MR. FONG: THANK YOU, YOUR HONOR.

10:50:02 24 Q AT THIS TIME I WANT TO PUBLISH DEFENSE EXHIBIT  
10:50:06 25 G.

10:50:08 1 MR. LIGHTER, DO YOU HAVE A COPY OF G IN  
10:50:11 2 FRONT OF YOU?

10:50:11 3 A I DO.

10:50:12 4 Q OKAY. AND AS YOU TESTIFIED, THAT IS INDEED  
10:50:20 5 YOUR SIGNATURE?

10:50:21 6 A CORRECT.

10:50:21 7 Q AND IN THE "PAID PREPARER'S USE ONLY" BOX,  
10:50:27 8 RIGHT?

10:50:27 9 A CORRECT.

10:50:27 10 Q AND YOU DID SIGN THIS ON OCTOBER 19TH, 2003?

10:50:31 11 A YES.

10:50:31 12 Q AND YOU DID SEE MR. BOURDIER SIGN HIS NAME AND  
10:50:36 13 DATE IT ON OCTOBER 19TH, 2003?

10:50:40 14 A YES.

10:50:40 15 Q NOW, DIRECTING YOUR ATTENTION TO THE  
10:50:42 16 HANDWRITING THAT YOU TESTIFIED TO A LITTLE EARLIER.  
10:50:45 17 DO YOU SEE THE WORDS "DRAFT ONLY," WITH AN  
10:50:49 18 EXCLAMATION POINT ABOVE THE TITLE U.S. CORPORATION  
10:50:54 19 INCOME TAX RETURN?

10:50:55 20 A YES.

10:50:55 21 Q AND YOU TESTIFIED THAT'S YOUR HANDWRITING,  
10:50:58 22 RIGHT?

10:50:58 23 A YES.

10:50:58 24 Q AND WHAT WAS YOUR INTENT IN WRITING THE WORDS  
10:51:01 25 "DRAFT ONLY" ON THIS DOCUMENT?

10:51:03 1 MS. WONG: OBJECTION, YOUR HONOR. THE  
10:51:04 2 DOCUMENT SPEAKS FOR ITSELF.

10:51:10 3 MR. FONG: I'M ONLY ASKING HIS INTENT,  
10:51:12 4 YOUR HONOR.

10:51:16 5 THE COURT: OVERRULED. YOU CAN ANSWER  
10:51:17 6 THE QUESTION, SIR.

10:51:18 7 THE WITNESS: THANK YOU. SINCE I HAD NOT  
10:51:22 8 SEEN ANY SOURCE DOCUMENTS REGARDING THE FACTS  
10:51:30 9 RELATED TO HEART CORPORATION AND SUBSIDIARIES, I  
10:51:40 10 WAS ONLY AGREEING TO THIS IN DRAFT FORM AND  
10:51:47 11 ESPECIALLY SUBJECT TO A C.P.A. REVIEWING AND  
10:51:50 12 PREPARING THE RETURN. THIS IS GUIDANCE FOR A  
10:51:54 13 C.P.A.'S PERFORMANCE.

10:51:56 14 BY MR. FONG:

10:51:57 15 Q OKAY. NOW, THE WORDS HERE TO THE RIGHT OF THE  
10:52:00 16 WORDS "DRAFT ONLY," WHAT DOES THAT SAY? I'M NOT  
10:52:04 17 SURE I CAN COMPLETELY READ IT.

10:52:05 18 A "NEEDS PAGES 2, 3, 4 OF FORM 1120."

10:52:11 19 Q AND WHAT DO YOU MEAN BY THAT?

10:52:13 20 A WELL, BACK THEN THE FORM 1120, WHICH IS FOR  
10:52:21 21 CORPORATIONS, HAD MORE PAGES THAN THE NORMAL I.R.S.  
10:52:24 22 FORM AND THIS DRAFT PAGES 2, 3, AND 4 HAD NOT BEEN  
10:52:32 23 PREPARED BY ANYBODY.

10:52:36 24 Q NOW, DIRECTING YOUR ATTENTION TO THE LINE THAT  
10:52:38 25 READS NAME ON THE TOP -- TOWARD THE TOP OF THE



PAGE .

AND WHAT IS THE NAME OF THE CORPORATION  
THAT IS FILING THE RETURN OR FOR WHICH THIS RETURN  
WAS PREPARED?

A IT'S HEART CORPORATION.

Q OKAY. NOW, AND THEN TO THE RIGHT OF IT  
THERE'S THE BOX B WITH THE EMPLOYER IDENTIFICATION  
NUMBER.

DO YOU SEE THAT BOX?

A YES.

Q AND THERE'S A QUESTION MARK HERE WITHIN THAT  
BOX?

A YES.

Q IS THAT YOUR HANDWRITING?

A YES.

Q AND WHAT DO YOU MEAN BY THE QUESTION MARK?

A SAM FUNG AND JEAN-PAUL BOURDIER TOLD ME THAT  
THIS CORPORATION HAD ALREADY BEEN IN EXISTENCE. SO  
I'M ASKING FOR THE FORM SS4, WHICH IS THE  
APPLICATION FOR FEDERAL I.D. NUMBER.

Q OKAY. NOW, IT SHOWS HERE ON BOX C THAT THE  
DATE INCORPORATED WAS 12-9-1990.

DO YOU SEE THAT, SIR?

A YES.

Q OKAY. WHO PUT THAT INFORMATION IN?

10:53:45 1  
10:53:46 2  
10:53:56 3  
10:53:59 4  
10:54:01 5  
10:54:02 6  
10:54:05 7  
10:54:06 8  
10:54:07 9  
10:54:11 10  
10:54:15 11  
10:54:17 12  
10:54:19 13  
10:54:19 14  
10:54:29 15  
10:54:30 16  
10:54:30 17  
10:54:33 18  
10:54:33 19  
10:54:36 20  
10:54:37 21  
10:54:41 22  
10:54:45 23  
10:54:48 24  
10:54:49 25

A SAM FUNG.

Q OKAY. DID YOU HAVE ANY INPUT WITH PREPARING  
THIS ENTRY 12-9-1990?

A I HAD NO INPUT IN PREPARING THE ENTRY. SAM  
FUNG PREPARED THE RETURN.

Q WHEN YOU TALK ABOUT THE ENTRY, ARE YOU TALKING  
ABOUT THE TYPED WRITTEN ENTRIES?

A YES.

Q OKAY. NOW, DIRECTING YOUR ATTENTION TO THE  
TOP RIGHT-NUMBER IN THE RIGHT-HAND COLUMN IN TERMS  
OF THE BOX D, TOTAL ASSETS.

DO YOU SEE THAT, SIR?

A YES.

Q AND THE NUMBER 2, THERE'S A NUMBER OF  
2,559,000. DO YOU SEE THAT, SIR?

A YES.

Q AND, FIRST OF ALL, DID YOU PUT THAT NUMBER  
THERE?

A NO. I THINK SAM TOOK THAT INVENTORY THAT WAS  
DONE BY JEAN-PAUL BOURDIER.

Q OKAY. NOW, THERE'S AN ARROW, A CIRCLE AND AN  
ARROW POINTING BACK TO SOME HANDWRITING READING  
"NEEDS SOURCE DOCUMENT."

DO YOU SEE THAT, SIR?

A YES.

10:54:49 1 Q AND THAT'S YOUR HANDWRITING, IS IT?

10:54:51 2 A YES.

10:54:52 3 Q AND WHAT DID YOU MEAN BY IT "NEEDS SOURCE  
10:54:59 4 DOCUMENT"?

10:55:00 5 A WELL, I'M JUST TAKING THEIR WORD FOR IT. I  
10:55:03 6 HAVEN'T SEEN THE DOCUMENT THAT SUPPORTS THE NUMBERS  
10:55:07 7 OR HOWEVER FEW THERE ARE.

10:55:09 8 Q AND THERE'S AN ARROW WITH THE, ANOTHER ARROW  
10:55:14 9 FROM THE WORDS "NEEDS SOURCE DOCUMENTS" TO THE LINE  
10:55:18 10 10, THE \$10,000 FIGURE.

10:55:21 11 DO YOU SEE THAT?

10:55:21 12 A YES, I DO.

10:55:22 13 Q AND WHAT DO YOU MEAN BY THAT?

10:55:23 14 A I DIDN'T SEE A CHECKBOOK OR A CHECK REGISTER.

10:55:35 15 Q AND THERE'S ALSO AN ARROW TO LINE 15 WHICH HAS  
10:55:38 16 THE ENTRY OF \$302,000.

10:55:43 17 DO YOU SEE THAT?

10:55:43 18 A YES.

10:55:44 19 Q AND, FIRST OF ALL, WHAT DID YOU UNDERSTAND  
10:55:45 20 LINE 15 TO BE, TO REPRESENT?

10:55:47 21 A THE OFFSHORE INVESTMENT LOSS RELATED TO N.T.S.

10:55:54 22 Q WHOSE LOSS?

10:55:55 23 A JEAN-PAUL -- MOSTLY HIS WIFE.

10:55:59 24 Q AND WHY IS THAT LOSS -- DO YOU KNOW WHY THAT  
10:56:04 25 LOSS NUMBER IS ENTERED AS \$302,000?

10:56:11 1 A THAT'S THE AMOUNT OF CASH THAT HE SAID HE  
10:56:14 2 INVESTED OFFSHORE AND LOST AND I THINK IT WAS CASH  
10:56:19 3 FOR TITLE. I'M NOT REALLY -- I WASN'T REALLY SURE.

10:56:25 4 Q OKAY. AT THE TIME THAT YOU WROTE "NEEDS  
10:56:27 5 SOURCE DOCUMENTS," WITH THE ARROW POINTING TO LINE  
10:56:30 6 15, THE \$302,000 ENTRY, DID YOU KNOW -- DID YOU  
10:56:37 7 HAVE A BELIEF AS TO WHETHER OR NOT THAT \$302,000  
10:56:42 8 WAS ACTUALLY A DEDUCTIBLE LOSS?

10:56:43 9 A IF HE LOST \$300,000 IN AN INVESTMENT, I WOULD  
10:56:51 10 BELIEVE THAT WOULD BE SOME KIND OF A LOSS.

10:56:54 11 Q OKAY. AND WHY DID YOU DRAW THE ARROW THEN  
10:56:57 12 "NEEDS SOURCE DOCUMENTS."

10:57:01 13 A I ONLY HAD HIS WORD FOR IT, THE NUMBER.

10:57:05 14 MS. WONG: ASKED AND ANSWERED.

10:57:05 15 THE COURT: EXCUSE ME, SIR. SUSTAINED.

10:57:08 16 BY MR. FONG:

10:57:14 17 Q DIRECTING YOUR ATTENTION NOW TO THE SECOND  
10:57:15 18 PAGE OF EXHIBIT G.

10:57:19 19 OKAY. THE -- TO THE RIGHT OF THE ENTRY  
10:57:24 20 HEART CORPORATION, LIST OF SUBSIDIARIES THERE ARE  
10:57:27 21 THE WORDS "DRAFT ONLY."

10:57:30 22 IS THAT YOUR HANDWRITING?

10:57:31 23 A YES.

10:57:31 24 Q AND THEN THE LAST LINE ON PAGE 2 IT READS  
10:57:37 25 "RETURNS --" WERE, ACTUALLY THE LAST PARAGRAPHS --

10:57:41 1 "RETURNS FOR THE ABOVE FOR YEARS PRIOR TO 2002 HAVE  
10:57:45 2 BEEN ACCEPTED AS FILED."

10:57:46 3 DO YOU SEE THAT?

10:57:47 4 A YES.

10:57:47 5 Q AND "INTERNAL AUDIT FOR ALL ISSUES IS ONGOING  
10:57:51 6 AND RESULTS WILL BE PROMPTLY FORWARDED."

10:57:55 7 DO YOU SEE THAT?

10:57:55 8 A YES.

10:57:55 9 Q AND TO THE RIGHT OF THAT THERE'S AN ARROW AND  
10:57:58 10 POINTING TO THE PARAGRAPH AND IT SAYS, "NEEDS TO  
10:58:02 11 HIRE C.P.A."

10:58:04 12 DO YOU SEE THAT?

10:58:05 13 A YES.

10:58:05 14 Q AND WHOSE HANDWRITING IS THAT WITH THE ARROW  
10:58:08 15 AND "NEED TO HIRE C.P.A.," I SHOULD SAY?

10:58:15 16 WHO PUT THAT THERE?

10:58:17 17 A THAT'S MY HANDWRITING.

10:58:18 18 Q AND WHY DID YOU PUT IT THERE?

10:58:20 19 A BECAUSE IT SAYS THE RETURNS SUBSIDIARIES WERE  
10:58:26 20 ACCEPTED AS FILED BUT I HADN'T SEEN ANY RETURNS.

10:58:30 21 Q OKAY. AND SO WERE YOU -- WHAT WERE YOU -- I'M  
10:58:35 22 SORRY, GO AHEAD.

10:58:35 23 A AND I'M LEAVING THAT DAY BACK TO HAWAII.

10:58:39 24 Q OKAY. NOW, DID YOU MAKE THESE WRITINGS IN  
10:58:42 25 FRONT OF MR. BOURDIER?

10:58:43 1  
10:58:44 2  
10:58:47 3  
10:58:47 4  
10:59:00 5  
10:59:02 6  
10:59:02 7  
10:59:05 8  
10:59:07 9  
10:59:10 10  
10:59:14 11  
10:59:14 12  
10:59:17 13  
10:59:51 14  
10:59:54 15  
10:59:56 16  
10:59:58 17  
10:59:59 18  
10:59:59 19  
11:00:03 20  
11:00:06 21  
11:00:07 22  
11:00:09 23  
11:00:10 24  
11:00:11 25

A YES.

Q WHAT ABOUT IN FRONT OF SAM FUNG?

A YES.

Q OKAY. NOW I'M GOING TO SWITCH TO GOVERNMENT'S EXHIBIT 118. DO YOU SEE THAT, SIR?

A YES.

Q AND, NOW, ON THE SIGNATURE THAT YOU ALREADY TESTIFIED THAT YOU HAD NOT SIGNED, MY QUESTION TO YOU, THOUGH, IS DID YOU EVER AUTHORIZE ANYBODY TO SIGN YOUR SIGNATURE ONTO THIS DOCUMENT GOVERNMENT'S EXHIBIT 118?

A ABSOLUTELY NO.

Q OKAY. MAY I TROUBLE YOU, MS. BURGESS, TO BRING UP EXHIBIT 111. AND THANK YOU.

AND THAT HAS ALREADY BEEN ADMITTED INTO EVIDENCE. DO YOU SEE THAT DOCUMENT IN FRONT OF YOU, MR. LIGHTER?

A YES.

Q AND, MS. BURGESS, IF YOU DON'T MIND -- FIRST OF ALL, WHAT IS THAT DOCUMENT? WELL, WHAT DO YOU READ THAT DOCUMENT TO SAY?

THE COURT: DO YOU WANT HIM TO READ THE WHOLE DOCUMENT?

MR. FONG: NO, JUST THE TITLE.

THE WITNESS: IT PURPORTS TO BE A

11:00:13 1 PROMISSORY NOTE.

11:00:13 2 MR. FONG: AND MAY I TROUBLE YOU,  
11:00:16 3 MS. BURGESS, TO SCROLL UP SO WE CAN SEE BOTH  
11:00:20 4 SIGNATURES.

11:00:25 5 Q AND ON THE BOTTOM OF THE PAGE EXHIBIT 111 DO  
11:00:30 6 YOU SEE THAT THERE'S A SIGNATURE FOR JEAN-PAUL?

11:00:34 7 A YES.

11:00:34 8 Q AND THEN BELOW THAT IT HAS A SIGNATURE SPACE  
11:00:39 9 FOR HEART CORPORATION BY, AND THEN IN TYPED WORDS  
11:00:44 10 ERIC AARON LIGHTER, SECRETARY.

11:00:47 11 DO YOU SEE THAT?

11:00:48 12 A ACTUALLY IT SAYS ERIC AARON LIGHTER -- THERE'S  
11:00:53 13 NO "G."

11:00:55 14 Q NO. I'M TALKING ABOUT THE TYPED WRITTEN  
11:00:57 15 WORDS.

11:00:58 16 A OH, YES.

11:00:58 17 Q SECRETARY. DO YOU SEE THAT?

11:01:00 18 A YES.

11:01:00 19 Q AND ABOVE THAT SIGNATURE SPACE THERE'S A  
11:01:02 20 SIGNATURE.

11:01:03 21 DO YOU SEE THAT?

11:01:04 22 A YES.

11:01:05 23 Q AND IS THAT YOUR SIGNATURE, SIR?

11:01:07 24 A ABSOLUTELY, NO.

11:01:08 25 Q AND, NOW, DID YOU EVER AUTHORIZE ANYBODY TO

11:01:13 1 SIGN YOUR NAME ON THIS DOCUMENT, THE PROMISSORY  
11:01:19 2 NOTE?

11:01:19 3 A ABSOLUTELY NO.

11:01:25 4 Q OKAY.

11:01:26 5 A AND LET ME ADD, IN ANY NOTES, PROMISSORY NOTES  
11:01:36 6 THAT I HAVE DRAFTED IN 30 YEARS I CAN'T RECALL ONE  
11:01:41 7 TIME WHERE I INCLUDED A SIGNATURE BLOCK FOR A  
11:01:45 8 CREDITOR THAT NOTES TO BE SIGNED BY ONLY DEBTORS  
11:01:53 9 AND GUARANTORS.

11:01:55 10 Q OKAY. SO YOU DID NOT SIGN THIS DOCUMENT AND  
11:01:57 11 ALSO YOU DID NOT AUTHORIZE ANYBODY TO SIGN THIS  
11:01:59 12 DOCUMENT?

11:01:59 13 MS. WONG: OBJECTION. ASKED AND  
11:02:01 14 ANSWERED.

11:02:01 15 THE COURT: SUSTAINED.

11:02:03 16 BY MR. FONG:

11:02:03 17 Q DID MR. BOURDIER ASK YOU FOR PERMISSION TO  
11:02:06 18 SIGN YOUR NAME ONTO ANY DOCUMENT?

11:02:14 19 A NO.

11:02:14 20 MR. FONG: MAY I TROUBLE YOU, MS.  
11:02:15 21 BURGESS, TO BRING UP 112, PLEASE? YEAH, 112, THE  
11:02:20 22 FIRST PAGE. THANK YOU.

11:02:27 23 Q I'M DISPLAYING AND PUBLISHING ON THE SCREEN  
11:02:30 24 EXHIBIT 112, WHICH IS ALREADY ADMITTED INTO  
11:02:32 25 EVIDENCE. IT SAYS THAT THE HEADING READS, "AFTER



11:02:36 1 RECORDING, RETURN BY MAIL."

11:02:39 2 AND THEN IT READS "ERIC LIGHTER, VICE  
11:02:42 3 PRESIDENT, HEART CORPORATION, 1678 SHATTUCK AVENUE,  
11:02:46 4 NUMBER 249, BERKELEY, CALIFORNIA?"

11:02:49 5 AND THEN IT SAYS BELOW THAT THERE'S A  
11:02:52 6 LINE READING "REAL PROPERTY MORTGAGE."

11:02:55 7 FIRST OF ALL, DO YOU SEE THOSE WORDS,  
11:02:58 8 SIR?

11:02:58 9 A YES.

11:02:58 10 Q DO YOU RECOGNIZE THE ADDRESS 1678 SHATTUCK  
11:03:04 11 AVENUE, NUMBER 249 IN BERKELEY, CALIFORNIA?

11:03:08 12 A I HAVE NO CLUE.

11:03:09 13 Q OKAY. HAVE YOU EVER BEEN TO, AS FAR AS YOU  
11:03:12 14 KNOW, 1678 SHATTUCK AVENUE, 249 IN BERKELEY,  
11:03:17 15 CALIFORNIA?

11:03:18 16 A NO.

11:03:18 17 Q AND THIS IS A MORTGAGE, IT APPEARS TO BE FOR  
11:03:29 18 \$350,000 OWING TO HEART CORPORATION FROM JEAN-PAUL  
11:03:33 19 BOURDIER.

11:03:37 20 DO YOU SEE THAT, SIR?

11:03:38 21 A YES.

11:03:38 22 Q AND MAY I TROUBLE YOU, MS. BURGESS, TO BE TO  
11:03:41 23 THE -- I THINK IT'S THE THIRD PAGE WHERE THE  
11:03:45 24 SIGNATURE BLOCK IS.

11:03:56 25 DO YOU SEE THE ENLARGEMENT OF THE THIRD

11:03:59 1 PAGE SIGNATURE BLOCK ON GOVERNMENT'S EXHIBIT 112,  
11:04:02 2 SIR?

11:04:02 3 A I DO.

11:04:08 4 Q AND YOU SEE AT THE TOP ARE TWO SIGNATURE  
11:04:10 5 BLOCKS; IS THAT CORRECT?

11:04:11 6 A YES.

11:04:11 7 Q AND THE FIRST ONE HAS THE NAME TYPED OF  
11:04:14 8 JEAN-PAUL BOURDIER AND THEN JUST BELOW THAT THE  
11:04:20 9 WORDS MORTGAGOR.

11:04:21 10 DO YOU SEE THAT?

11:04:22 11 A YES.

11:04:23 12 Q AND, FIRST OF ALL, DO YOU RECOGNIZE THAT  
11:04:30 13 SIGNATURE IN THE BLOCK OF JEAN-PAUL BOURDIER?

11:04:32 14 A YES, IT LOOKS LIKE HIS SIGNATURE, THAT'S ALL I  
11:04:35 15 COULD SAY.

11:04:35 16 Q AND DID YOU SEE MR. BOURDIER SIGN THIS  
11:04:37 17 DOCUMENT?

11:04:37 18 A NO.

11:04:38 19 Q OKAY. NOW, BELOW THAT IT HAS A SIGNATURE FOR  
11:04:44 20 HEART CORPORATION BY AND THEN THE TYPED WRITTEN  
11:04:46 21 WORDS ERIC AARON LIGHTER, SECRETARY, AND THEN BELOW  
11:04:52 22 THAT MORTGAGEE.

11:04:54 23 DO YOU SEE THAT? DO YOU SEE THAT?

11:04:57 24 A YES.

11:04:57 25 Q AND THERE'S A SIGNATURE ON THAT LINE JUST

11:05:05 1 BELOW HEART CORPORATION AND THE NAME ERIC AARON  
11:05:09 2 LIGHTER.

11:05:09 3 DO YOU SEE THAT?

11:05:10 4 A YES.

11:05:10 5 Q AND IS THAT YOUR SIGNATURE, SIR?

11:05:12 6 A NOT EVEN CLOSE.

11:05:13 7 Q SO THE ANSWER IS NO?

11:05:15 8 A THE ANSWER IS NO.

11:05:15 9 Q AND DID YOU AUTHORIZE MR. BOURDIER TO SIGN  
11:05:21 10 THAT ON YOUR BEHALF?

11:05:23 11 A ABSOLUTELY, NO.

11:05:25 12 Q AND DID YOU AUTHORIZE ANYBODY TO SIGN THAT ON  
11:05:27 13 YOUR BEHALF?

11:05:28 14 A NO.

11:05:28 15 Q AND DID MR. BOURDIER ASK YOU FOR PERMISSION TO  
11:05:35 16 SIGN YOUR NAME ONTO A MORTGAGE?

11:05:37 17 A NO.

11:05:38 18 Q THANK YOU VERY MUCH.

11:05:56 19 BY THE WAY, DID YOU HAVE ANY OTHER  
11:05:58 20 BUSINESS TRANSACTIONS WITH PROFESSOR BOURDIER OTHER  
11:06:00 21 THAN WHAT WE HAVE TESTIFIED -- OTHER THAN WHAT YOU  
11:06:05 22 HAVE TESTIFIED HERE TO TODAY?

11:06:12 23 A I CALLED HIM SOME MONTHS LATER AFTER MY VISIT  
11:06:18 24 TO LET HIM KNOW THAT HCHC BOUGHT AN OREGON RANCH  
11:06:23 25 AND THAT WAY IT HAD NO DEBT ON IT AND SO THAT HIS

11:06:26 1 10 PERCENT WAS WORTH MORE THAN THEY ORIGINALLY  
11:06:30 2 THOUGHT.

11:06:30 3 Q OKAY. AND AT SOME POINT DID YOU RECEIVE  
11:06:36 4 NOTICE THAT EITHER HEART OR HEART MIND CORPORATION  
11:06:42 5 HAD BEEN DISSOLVED?

11:06:49 6 A IN DECEMBER OF 2004 I GOT A LETTER BUT  
11:06:53 7 MR. FUNG TOLD ME EARLIER, NOT MUCH EARLIER.

11:07:01 8 Q AND DID YOU EVER GET NOTICE OFFICIALLY FROM  
11:07:03 9 THE CORPORATION, BE IT HEART CORPORATION OR HEART  
11:07:08 10 MIND CORPORATION, THAT LOOK, HCHC, YOU'RE A  
11:07:11 11 SHAREHOLDER, AND WE'RE NOTIFYING YOU THAT WE'RE  
11:07:14 12 CONSIDERING OR VOTING TO DISSOLVE THE CORPORATION?

11:07:17 13 MS. WONG: OBJECTION, ASKED AND ANSWERED.

11:07:18 14 THE COURT: SUSTAINED.

11:07:30 15 BY MR. FONG:

11:07:31 16 Q I'M GOING TO SHOW YOU A DOCUMENT THAT HAS BEEN  
11:07:33 17 MARKED AS DEFENSE EXHIBIT MM AS IN MARY.

11:07:46 18 DO YOU SEE THAT, SIR?

11:07:47 19 A I DO.

11:07:48 20 Q NOW, DID YOU EVER -- BEFORE TODAY, HAVE YOU  
11:07:51 21 SEEN THIS DOCUMENT BEFORE?

11:07:52 22 A YES.

11:07:52 23 Q OKAY. AND WHEN -- APPROXIMATELY WHEN DID YOU  
11:07:55 24 SEE IT?

11:07:56 25 A LATE DECEMBER OF 2004.

11:07:59 1 Q OKAY. AND WHAT WAS YOUR UNDERSTANDING AS TO  
11:08:04 2 THE GENERAL DESCRIPTION OF THIS DOCUMENT WITHOUT  
11:08:06 3 GOING INTO THE CONTENT?

11:08:07 4 A I'D SAY NOTICE TO ME REGARDING THE STATUS OF  
11:08:18 5 HEART MIND CORPORATION.

11:08:20 6 Q IS IT A LETTER?

11:08:21 7 A IT'S A LETTER SENT THROUGH MAIL.

11:08:26 8 MR. FONG: YOUR HONOR, I'M GOING TO ASK  
11:08:29 9 TO MOVE IN DEFENSE EXHIBIT MM.

11:08:32 10 MS. WONG: OBJECTION AS TO BOTH HEARSAY  
11:08:34 11 AND RELEVANCE.

11:08:38 12 THE COURT: AS TO THE HEARSAY OBJECTION,  
11:08:40 13 IS THERE AN EXCEPTION?

11:08:41 14 MR. FONG: YES, IT PLACED MR. LIGHTER ON  
11:08:43 15 NOTICE AS TO THE STATUS OF HEART MIND CORPORATION.

11:08:46 16 THE COURT: YOU'RE ASKING IT BE ADMITTED  
11:08:48 17 FOR THE TRUTH OF THE MATTER ASSERTED?

11:08:50 18 MR. FONG: NO. IT'S JUST THAT -- WHAT IT  
11:08:53 19 DOES, YOUR HONOR, IS THAT IT'S A REPRESENTATION  
11:08:55 20 FROM JEAN-PAUL BOURDIER.

11:09:01 21 THE COURT: YOU DON'T HAVE TO TELL US  
11:09:02 22 WHAT IT IS. IT'S A LETTER FROM SOMEONE OTHER THAN  
11:09:05 23 THIS WITNESS?

11:09:06 24 MR. FONG: YES.

11:09:06 25 THE COURT: I'LL SUSTAIN THE OBJECTION.

11:09:07 1 MR. FONG: OKAY.

11:09:10 2 Q AT SOME POINT, MR. LIGHTER, DID YOU EVER LEARN  
11:09:15 3 WHAT HAPPENED TO HCHC'S 100 SHARES OF HEART  
11:09:23 4 CORPORATION OR HEART MIND CORPORATION?

11:09:24 5 A YES.

11:09:29 6 Q OKAY. NOW, WHAT IS YOUR UNDERSTANDING AS TO  
11:09:34 7 WHAT HAPPENED -- WHAT HAPPENED -- WELL, AT SOME  
11:09:37 8 POINT YOU LEARNED THAT HEART OR HEART MIND  
11:09:40 9 CORPORATION HAD BEEN DISSOLVED; IS THAT CORRECT?

11:09:41 10 A IN DECEMBER OF 2004 I LEARNED THAT IT WAS  
11:09:48 11 DISSOLVED AND IT HAD STRIPPED THE CORPORATION OF  
11:09:54 12 ASSETS.

11:09:55 13 Q NOW, DID YOU EVER RECEIVE ANY -- DID HCHC EVER  
11:10:01 14 RECEIVE ANY FORM OF CONSIDERATION OR ANYTHING OF  
11:10:05 15 VALUE FOR ITS 100 SHARES OF HEART OR HEART MIND  
11:10:11 16 CORPORATION?

11:10:11 17 A I RECEIVED -- IN THE DISSOLUTION.

11:10:20 18 Q NO, I'M TALKING ABOUT ANY TIME.

11:10:22 19 A I EXCHANGED 10 PERCENT OF HCHC AND HEART.

11:10:28 20 Q AND HOW WAS THAT DONE?

11:10:29 21 A A SIMPLE EXCHANGE. A MUTUAL EXCHANGE OF  
11:10:33 22 STOCK.

11:10:33 23 Q AND -- BUT AS TO THE 10 PERCENT OF HEART OR  
11:10:38 24 HEART MIND CORPORATION THAT HCHC HELD, DID HCHC  
11:10:42 25 EVER RECEIVE ANYTHING OF VALUE FOR IT? ANY KIND OF

11:10:47 1 MONETARY OR ANY KIND OF TANGIBLE ASSET?

11:10:53 2 MS. WONG: OBJECTION AS TO RELEVANCE TO  
11:10:55 3 THIS LINE OF QUESTIONING.

11:10:56 4 MR. FONG: YOUR HONOR, IT GOES TO THE  
11:10:57 5 LEGITIMACY OF THE TRANSACTION BETWEEN MR. BOURDIER  
11:10:59 6 AND MR. LIGHTER.

11:11:03 7 THE COURT: YOU CAN ANSWER THE QUESTION  
11:11:05 8 YES OR NO IF YOU RECEIVED ANYTHING.

11:11:06 9 THE WITNESS: I RECEIVED 10 PERCENT OF  
11:11:08 10 THE STOCK, WHICH IS IT HAS INTEREST VALUE BECAUSE  
11:11:15 11 THEY KNOW ABOUT THE INVENTORY TO ANSWER YOUR  
11:11:17 12 QUESTION.

11:11:17 13 BY MR. FONG:

11:11:18 14 Q WELL, LET ME ASK YOU THIS, THE 10 PERCENT, THE  
11:11:21 15 100 SHARES OF HCHC THAT HAD BEEN TRANSFERRED OVER  
11:11:24 16 TO MR. BOURDIER'S COMPANY, OKAY, WHAT HAPPENED TO  
11:11:28 17 THAT?

11:11:28 18 A HE KEPT IT UNTIL HE SENT IT BACK OUT FOR  
11:11:35 19 DISSOLUTION.

11:11:36 20 Q SO THE 100 SHARES OF HCHC WHICH HAD BEEN  
11:11:43 21 EXCHANGED WITH MR. BOURDIER'S COMPANY EARLIER,  
11:11:50 22 ABOUT A YEAR EARLIER, WAS SUBSEQUENTLY SENT BACK TO  
11:11:52 23 YOU?

11:11:53 24 A YES.

11:11:56 25 MS. WONG: OBJECTION, ASKED AND ANSWERED.

11:11:57 1 THE COURT: SUSTAINED. THE ANSWER WILL  
11:11:59 2 BE STRICKEN.

11:12:00 3 MR. FONG: I'LL MOVE ON, YOUR HONOR.

11:12:01 4 Q MR. LIGHTER, LET ME ASK YOU ABOUT YOUR  
11:12:04 5 DEALINGS WITH DR. IRWIN GOOTNICK, OKAY?

11:12:07 6 A OKAY.

11:12:07 7 Q NOW, WHEN DID YOU -- WHEN DID YOU FIRST HEAR  
11:12:10 8 ABOUT DR. GOOTNICK?

11:12:11 9 A I THINK MARCH OF 2004.

11:12:20 10 Q OKAY. AND WHO BROUGHT DR. GOOTNICK TO YOUR  
11:12:25 11 ATTENTION?

11:12:25 12 A SAM FUNG.

11:12:26 13 Q AND DID YOU HAVE SOME CONVERSATIONS WITH  
11:12:29 14 DR. GOOTNICK AFTER SAM FUNG MADE THE INITIAL  
11:12:33 15 INTRODUCTION?

11:12:33 16 A SAM FUNG GAVE HIM MY PHONE NUMBER I UNDERSTAND  
11:12:38 17 AND THEN HE -- GOOTNICK CALLED ME.

11:12:40 18 Q OKAY. DID YOU HAVE SOME TELEPHONE  
11:12:42 19 CONVERSATIONS WITH DR. GOOTNICK?

11:12:43 20 A YES.

11:12:44 21 Q OKAY. AND WHAT DID YOU AND DR. GOOTNICK TALK  
11:12:50 22 ABOUT IN THOSE TELEPHONE CONVERSATIONS?

11:12:52 23 MS. WONG: OBJECTION. IT CALLS FOR  
11:12:53 24 HEARSAY, YOUR HONOR.

11:12:54 25 MR. FONG: COMPLETENESS. DR. GOOTNICK



11:12:56 1 TESTIFIED EXTENSIVELY --

11:12:58 2 THE COURT: SUSTAINED. YOU CAN ASK  
11:12:59 3 ANOTHER QUESTION.

11:13:00 4 MR. FONG: OKAY.

11:13:01 5 Q WHAT DID YOU -- DID YOU EVER COME TO HAVE  
11:13:05 6 ANY -- DID YOU EVER ENTER INTO ANY BUSINESS  
11:13:07 7 TRANSACTIONS WITH DR. GOOTNICK, DR. IRWIN GOOTNICK?

11:13:11 8 A I DID. IT WAS ALMOST AN IDENTICAL MUTUAL  
11:13:16 9 EXCHANGE OF STOCK AS THE BOURDIERS.

11:13:18 10 Q AND -- EXCUSE ME, YOUR HONOR. LET ME JUST  
11:13:23 11 GRAB A DIFFERENT FOLDER.

11:14:04 12 NOW, MR. LIGHTER, YOU STARTED TALKING TO  
11:14:07 13 DR. GOOTNICK APPROXIMATELY WHEN?

11:14:08 14 A SOME TIME IN MARCH OF 2004.

11:14:10 15 Q ALL RIGHT. AND WHAT WAS YOUR INTENTION IN  
11:14:12 16 TERMS OF YOUR -- WHY YOU WERE TALKING TO  
11:14:17 17 DR. GOOTNICK?

11:14:17 18 A HOPEFULLY I COULD OBTAIN A PARTNER OR  
11:14:21 19 DEVELOPER FOR THE HOTEL AND/OR THE ROYAL PATENTS  
11:14:28 20 PROJECT THAT WAS HOPED TO HAVE COME TO FRUITION  
11:14:33 21 SOON.

11:14:33 22 Q OKAY. AND THE HOTEL I THINK YOU HAVE ALREADY  
11:14:37 23 TESTIFIED TO.

11:14:37 24 WHAT IS THE ROYAL PATENT -- IS THAT A  
11:14:42 25 DEVELOPMENT PROJECT?

11:14:43 1  
11:14:45 2  
11:14:48 3  
11:14:50 4  
11:14:51 5  
11:14:55 6  
11:14:59 7  
11:15:02 8  
11:15:04 9  
11:15:07 10  
11:15:09 11  
11:15:14 12  
11:15:17 13  
11:15:19 14  
11:15:20 15  
11:15:23 16  
11:15:24 17  
11:15:25 18  
11:15:29 19  
11:15:31 20  
11:15:37 21  
11:15:40 22  
11:15:42 23  
11:15:43 24  
11:15:44 25

A YES.

Q OKAY. AND WHAT IS YOUR UNDERSTANDING OF THE ROYAL PATENT DEVELOPMENT PROJECT FROM YOUR PERSPECTIVE?

A WELL, FIRST OF ALL, YOU HAVE TO KNOW WHAT A ROYAL PATENT IS. MAY I SAY THAT?

Q WELL, WHATEVER YOU NEED TO EXPLAIN YOUR UNDERSTANDING OF WHAT THE -- WHAT YOU REFER TO AS THE ROYAL PATENT DEVELOPMENT PROJECT.

EXPLAIN TO US WHAT YOU MEAN BY THAT?

A WELL, THE ROYAL PATENT --

MS. WONG: OBJECTION. THIS LINE OF QUESTIONING HAS ALREADY BEEN DEVELOPED ON FRIDAY AND --

THE COURT: I THINK YOU DEVELOPED SOME OF THIS ON FRIDAY.

MR. FONG: I DO NOT BELIEVE WE HAVE GOTTEN INTO THE SPECIFIC DETAILS BUT --

THE COURT: LET ME ALLOW YOU SOME LATITUDE HERE.

YOU CAN ANSWER THE QUESTION, SIR.  
BY MR. FONG:

Q MR. LIGHTER --

THE COURT: GO AHEAD AND ASK THE QUESTION.

11:15:45 1 BY MR. FONG:

11:15:45 2 Q OH, I'M SORRY. CAN YOU GIVE US A CONCISE  
11:15:49 3 SUMMARY OF WHAT THE ROYAL PATENT PROJECT WAS?

11:15:51 4 A BRIEF?

11:15:52 5 Q YES, BRIEF AS YOU CAN BUT -- SO THAT IT MAKES  
11:15:55 6 SENSE.

11:15:58 7 A THE ROYAL PATENT IS A WARRANTY DEED  
11:16:07 8 GUARANTEEING TITLE BY THE KINGDOM OF HAWAII AS  
11:16:12 9 CONFIRMED IN MY RESEARCH BY THE U.S. SUPREME COURT  
11:16:16 10 AND THE NINTH CIRCUIT COURT OF APPEALS.

11:16:18 11 MS. WONG: OBJECTION, YOUR HONOR. MOVE  
11:16:20 12 TO STRIKE THE LAST PART OF THE DEFENDANT'S ANSWER  
11:16:23 13 AS HEARSAY.

11:16:24 14 THE COURT: I'LL SUSTAIN THAT.

11:16:25 15 MR. FONG: THAT'S FINE, YOUR HONOR. IT  
11:16:27 16 ACTUALLY GOES TO HIS UNDERSTANDING, BUT I'M HAPPY  
11:16:29 17 TO MOVE ON, YOUR HONOR.

11:16:30 18 THE COURT: THANK YOU.

11:16:32 19 BY MR. FONG:

11:16:32 20 Q MR. LIGHTER, WITHOUT GOING INTO THE HISTORICAL  
11:16:35 21 ASPECT OF IT, FROM YOUR PERSPECTIVE, WHY WAS THE  
11:16:40 22 ROYAL PATENT, DID YOU THINK IT WAS A VALUABLE ASSET  
11:16:43 23 FOR YOUR COMPANY?

11:16:44 24 A YES, BECAUSE IT USUALLY INVOLVES LARGE TRACKS  
11:16:47 25 OF LAND, IT WAS A WARRANTY DEED FROM THE

11:16:50 1 GOVERNMENT, THE PRIOR GOVERNMENT, AND ANYBODY WITH  
11:16:57 2 ANY REAL WEALTH IN HAWAII PRETTY MUCH GOT THEIR  
11:17:01 3 WEALTH BY OWNING ROYAL PATENTS.

11:17:02 4 Q ALL RIGHT. OKAY. SO DID YOU -- DID A COMPANY  
11:17:05 5 OF YOURS EVENTUALLY ACQUIRE ANY RIGHTS TO A -- TO A  
11:17:11 6 -- TO A REAL ESTATE DEVELOPMENT AS RELATED TO THE  
11:17:15 7 ROYAL PATENTS?

11:17:16 8 A YES, FIVE ROYAL PATENTS COMPRISING  
11:17:18 9 APPROXIMATELY 13,500 ACRES.

11:17:21 10 Q OKAY. AND I GATHER THESE WERE 13,000 ACRES IN  
11:17:25 11 THE STATE OF HAWAII?

11:17:25 12 A YES, MAUI AND KAUAI.

11:17:28 13 Q AND WHAT -- DESCRIBE FOR US WHAT DID YOU  
11:17:33 14 UNDERSTAND THE RIGHTS TO BE INSOFAR AS THEY RELATE  
11:17:36 15 TO THE ISLAND OF KAUAI?

11:17:41 16 A KAUAI WAS AROUND 2 ACRES WITH FOUR HOUSES AND  
11:17:45 17 A BEAUTIFUL SANDY BEACH AND A GLORIOUS SANDY BEACH.  
11:17:49 18 AND IT WAS UNDISPUTED. AND 1800 ACRES ADJACENT TO  
11:17:54 19 IT THAT HAD A DISPUTE. A SUGAR ROBBER BARON WROTE  
11:18:03 20 A DEED TO HIMSELF.

11:18:04 21 Q AND DID THE COMPANY THAT YOU HAD AN INTEREST  
11:18:07 22 IN, DID IT ACQUIRE THE RIGHTS TO THE ROYAL PATENT  
11:18:11 23 AS THEY RELATE TO THAT 1300 ACRES THAT YOU JUST  
11:18:15 24 TESTIFIED TO, RIGHT?

11:18:16 25 MS. WONG: OBJECTION, YOUR HONOR, ASKED

11:18:19 1 AND ANSWERED.

11:18:19 2 THE COURT: IS THIS FOUNDATIONAL TO  
11:18:20 3 ANOTHER QUESTION?

11:18:20 4 MR. FONG: YES, YES, YOUR HONOR.

11:18:22 5 THE COURT: OKAY. WHY DON'T YOU ASK THE  
11:18:23 6 OTHER QUESTION.

11:18:24 7 MR. FONG: OKAY. SURE.

11:18:25 8 Q WHAT IS THE NAME OF THE COMPANY THAT ACQUIRED  
11:18:27 9 THE ROYAL PATENT RIGHTS AS INsofar AS THE  
11:18:30 10 1300 ACRES IN THE STATE OF KAUAI -- ON THE ISLAND  
11:18:35 11 OF KAUAI?

11:18:36 12 A WELL, I PERSONALLY OBTAINED TITLE AND THE  
11:18:45 13 DIAMOND CREDIT BUREAU OBTAINED THE DEVELOPMENT  
11:18:48 14 RIGHTS BECAUSE I ASSIGNED THE CREDIT RIGHTS TO  
11:18:50 15 DIAMOND CREDIT BUREAU.

11:18:51 16 Q IS DIAMOND CREDIT BUREAU A COMPANY THAT YOU  
11:18:55 17 FORMED?

11:18:55 18 A YES, IT'S OWNED BY HCHC.

11:18:58 19 Q AND TELL US WHAT KIND OF PROPERTY INTEREST ARE  
11:19:08 20 WE TALKING ABOUT INsofar AS THE ROYAL PATENTS AS  
11:19:10 21 THEY RELATE TO THE ISLAND OF MAUI?

11:19:13 22 A THERE'S FOUR PARCELS STILL IN THREE PROBATES  
11:19:20 23 AND WHAT HCHC SUBSIDIARY WITH ME IS THE INHERITANCE  
11:19:29 24 RIGHTS TO CLOSE THE PROBATES.

11:19:31 25 Q AND THAT WOULD -- AND IF THE PROBATES WERE

11:19:34 1 CLOSER IN YOUR FAVOR FROM YOUR PERSPECTIVE, WHAT  
11:19:37 2 WOULD THAT GIVE YOU?

11:19:38 3 A VERY VALUABLE LAND. MAUI IS VERY EXPENSIVE.

11:19:43 4 Q AND HOW MANY ACRES ON MAUI ARE WE TALKING  
11:19:46 5 ABOUT?

11:19:46 6 A 13,500.

11:19:48 7 Q OKAY. BUT NOW, THERE IS A LEGAL DISPUTE OVER  
11:19:55 8 WHETHER OR NOT THAT YOU RIGHTFULLY ACQUIRE OR  
11:19:57 9 WHETHER OR NOT YOU ACTUALLY OWN THESE PATENT  
11:20:01 10 RIGHTS; IS THAT TRUE?

11:20:02 11 A I DIDN'T OWN THE LAND. I OWN THE INHERITANCE  
11:20:06 12 RIGHTS. THE TITLE OF THE LAND IS IN COURT IN  
11:20:09 13 PROBATE.

11:20:09 14 Q BUT THERE'S, THERE'S A LEGAL DISPUTE OVER WHO  
11:20:12 15 GETS THE -- WHO GETS THE DEVELOPMENT RIGHTS; IS  
11:20:16 16 THAT CORRECT?

11:20:16 17 A IN MAUI, YES.

11:20:18 18 Q OKAY. NOW, IS THAT ALSO TRUE -- BUT THAT'S AS  
11:20:21 19 TO THE ENTIRE 13,000 ACRES IN MAUI, RIGHT?

11:20:25 20 A CORRECT.

11:20:26 21 Q NOW, AS TO KAUAI, THERE WAS ALSO LITIGATION OR  
11:20:30 22 DISPUTE AS TO WHO OWNS WHAT AS TO THOSE 1800 ACRES  
11:20:34 23 IN KAUAI; IS THAT CORRECT?

11:20:35 24 A BUT NOT THE PROPERTY WITH THE FOUR HOUSES.

11:20:40 25 Q SO WHAT -- TELL US WHAT THE FOUR HOUSES ARE?

11:20:44 1 A WELL, ONE IS A BEACH HOUSE ON A SANDY BEACH  
11:20:50 2 AND THE THREE OF THE HOUSES ARE IN MOUNTAINS,  
11:20:56 3 HIGHER UP IN THE MOUNTAINS.

11:20:57 4 Q ON THE ISLAND OF KAUAI?

11:20:59 5 A KAUAI.

11:21:00 6 Q OKAY. NOW, WHO OWNS THOSE FOUR HOUSES AS OF  
11:21:04 7 RIGHT NOW?

11:21:04 8 A I OWN THE TITLE AND DIAMOND CREDIT BUREAU HAS  
11:21:11 9 THE DEVELOPMENT RIGHTS EXCEPT THE DIAMOND CREDIT  
11:21:15 10 BUREAU SOLD TO ROYAL DEVELOPMENT CORPORATION PHIL  
11:21:20 11 WILKERSON TESTIFIED.

11:21:21 12 Q THE GENTLEMAN WHO TESTIFIED HERE LAST WEEK?

11:21:23 13 A YEAH, HE'S 25 PERCENT IN CONTROL.

11:21:30 14 Q BUT BACK IN 2004, WHO OWNED THOSE FOUR  
11:21:33 15 HOUSES -- WHO OWNED RIGHTS TO THOSE FOUR HOUSES ON  
11:21:36 16 THE ISLAND OF KAUAI THAT YOU TALKED ABOUT?

11:21:40 17 A THE HAWAIIANS. I DIDN'T CLOSE THE DEVELOPMENT  
11:21:43 18 AGREEMENT UNTIL AUGUST TO 27TH BASED ON THE EARLIER  
11:21:52 19 AUGUST AGREEMENT.

11:21:55 20 Q AND AUGUST 27TH OF WHAT YEAR?

11:21:58 21 A 2004.

11:21:58 22 Q SO AFTER AUGUST 27TH OF 2004 AND BEFORE THE  
11:22:02 23 RIGHTS WERE THEN SUBSEQUENTLY TRANSFERRED TO RDC,  
11:22:08 24 WHO HELD THE RIGHTS TO THOSE FOUR HOUSES?

11:22:10 25 A DIAMOND CREDIT BUREAU.

11:22:11 1 Q THE COMPANY THAT YOU FORMED?

11:22:12 2 A HCHC SUBSIDIARY, YES.

11:22:16 3 Q OKAY. NOW, THESE FOUR HOUSES, DO THEY SIT ON  
11:22:21 4 SOME TRACK OF LAND?

11:22:21 5 A THERE'S FOUR LITTLE PARCELS THAT COMPRISE THE  
11:22:32 6 TITLE, THE UNDISPUTED TITLE.

11:22:37 7 Q AND THOSE -- THE FOUR PARCELS, APPROXIMATELY  
11:22:41 8 HOW MANY ACRES DO THEY MAKE UP?

11:22:42 9 MS. WONG: OBJECTION, YOUR HONOR,  
11:22:44 10 RELEVANCE AS TO THIS LINE OF QUESTIONING.

11:22:45 11 MR. FONG: YOUR HONOR, THIS IS FOUNDATION  
11:22:47 12 FOR THESE TRANSACTIONS THAT MR. LIGHTER ENTERED  
11:22:51 13 INTO WITH DR. GOOTNICK.

11:22:52 14 THE COURT: DO WE NEED TO KNOW ALL OF  
11:22:55 15 THIS INFORMATION ABOUT EACH OF THE TRACKS AND THE  
11:22:58 16 VIEWS OF THE HOMES AND THAT? I MEAN, ISN'T IT JUST  
11:23:03 17 THE FACT THAT THE PROPERTIES EXIST?

11:23:08 18 MR. FONG: AND THEIR VALUE.

11:23:09 19 THE COURT: PERHAPS YOU CAN ASK HIM WHAT  
11:23:10 20 THE VALUE IS AND HE CAN STATE A VALUE.

11:23:18 21 BY MR. FONG:

11:23:19 22 Q SURE. AFTER YOU AND YOUR COMPANY ACQUIRED THE  
11:23:21 23 RIGHTS TO THESE FOUR HOUSES ON THE ISLAND OF KAUAI,  
11:23:25 24 DID YOU HAVE A BELIEF AS TO THE VALUE OF THOSE FOUR  
11:23:28 25 HOUSES AND THE PARCELS THAT THEY SIT ON?



11:23:30 1 A YES, MAUI -- THIS LOCATION IN KAUAI IS ALMOST  
11:23:37 2 AS EXPENSIVE AS THE RESORT LOCATIONS IN MAUI, ABOUT  
11:23:42 3 \$3 MILLION VALUE.

11:23:43 4 Q THAT'S \$3 MILLION TOTAL FOR THE FOUR HOUSES?

11:23:46 5 A YES.

11:23:47 6 Q OKAY. AND DO YOU KNOW IF THERE WERE ANY  
11:23:53 7 ENCUMBRANCES, ANY MORTGAGES, OR LIENS AGAINST THAT  
11:23:57 8 PROPERTY?

11:23:57 9 A NO.

11:23:57 10 Q NOW, WHEN DID YOU --

11:24:03 11 A ALSO I HAD A LEASE WITH THE SANDY BEACH  
11:24:08 12 10,000, 11,000 SQUARE FOOT PARCEL PORTION OF THE  
11:24:13 13 FOUR ACRE PROPERTY, I HAD IT FOR SEVEN YEARS PRIOR.

11:24:16 14 Q ALL RIGHT.

11:24:17 15 A PRIOR TO THE PURCHASE OF THE HOME.

11:24:19 16 Q OKAY. ALL RIGHT. NOW, BACK TO DR. GOOTNICK,  
11:24:26 17 WHEN DID YOU PHYSICALLY FIRST MEET DR. GOOTNICK?

11:24:29 18 A DECEMBER 17TH, 2004.

11:24:31 19 Q AND HOW LONG WAS THAT RELATIVE TO WHEN YOU  
11:24:34 20 FIRST STARTED TALKING TO DR. GOOTNICK?

11:24:38 21 A NINE MONTHS.

11:24:39 22 Q BECAUSE YOU HAD STARTED TALKING TO HIM ABOUT  
11:24:41 23 MARCH OF 2004?

11:24:43 24 A CORRECT.

11:24:43 25 Q OKAY. NOW, DID YOU EVER ENTER INTO ANY KIND

11:24:50 1 OF BUSINESS TRANSACTION OR CONTRACT WITH

11:24:54 2 DR. GOOTNICK?

11:24:55 3 A WE BECAME PARTNERS ON MARCH -- ON APRIL 2ND OR  
11:25:01 4 3RD, 2004.

11:25:03 5 Q OKAY. I'M GOING TO DISPLAY FOR YOU -- PUBLISH  
11:25:12 6 GOVERNMENT'S EXHIBIT 1 WHICH HAS ALREADY BEEN  
11:25:14 7 ADMITTED INTO EVIDENCE.

11:25:29 8 FIRST OF ALL, DO YOU SEE THAT DOCUMENT?

11:25:30 9 A I DO.

11:25:30 10 Q AND IS THAT YOUR SIGNATURE ON THE LOWER  
11:25:33 11 RIGHT-HAND CORNER?

11:25:33 12 A YES.

11:25:34 13 Q OKAY. AND WHERE WERE YOU WHEN YOU SIGNED THIS  
11:25:36 14 DOCUMENT?

11:25:36 15 A HAWAII.

11:25:37 16 Q OKAY. AND DO YOU SEE THE SIGNATURE SPACE  
11:25:40 17 BELOW WITH A SIGNATURE JUST ABOVE THE TYPED NAME OF  
11:25:45 18 IRWIN GOOTNICK?

11:25:46 19 A YES.

11:25:46 20 Q OKAY. DO YOU KNOW WHO SIGNED THAT SIGNATURE?

11:25:48 21 A IRWIN GOOTNICK.

11:25:53 22 Q AND DID YOU SEE DR. GOOTNICK SIGN HIS  
11:25:55 23 SIGNATURE?

11:25:55 24 A NO.

11:25:56 25 Q OKAY. NOW, THIS IS A MUTUAL ASSIGNMENT OF

11:25:58 1 STOCK.

11:25:58 2 DO YOU SEE THAT, SIR?

11:26:00 3 A YES.

11:26:00 4 Q OKAY. NOW, WHAT DID THIS DOCUMENT ACCOMPLISH  
11:26:03 5 IN YOUR MIND?

11:26:04 6 A IT WAS AN EXCHANGE OF STOCK THAT WE MADE AND A  
11:26:16 7 PARTNERSHIP.

11:26:16 8 Q AND WHICH TWO COMPANIES WERE EXCHANGING STOCK?

11:26:20 9 A GOOTNICK CHARITABLE TRUST, INC., AND HAWAIIIN  
11:26:26 10 COLONY HOTEL CORPORATION.

11:26:26 11 Q OKAY. IS THIS SIMILAR TO THE MUTUAL EXCHANGE  
11:26:31 12 OF STOCK THAT YOU ENTERED INTO WITH PROFESSOR  
11:26:33 13 BOURDIER?

11:26:34 14 A YES.

11:26:34 15 Q AND WHAT WAS THE PURPOSE BEHIND THIS MUTUAL  
11:26:36 16 EXCHANGE OF STOCK? I'M TALKING NOW ABOUT  
11:26:42 17 GOVERNMENT'S EXHIBIT 1 WITH DR. GOOTNICK.

11:26:44 18 A THIS IS MORE OF A HELLO, HOW ARE YOU  
11:26:47 19 INTRODUCTION TO A HOPE FOR A BIGGER VENTURE.

11:26:55 20 Q OKAY. YOU TESTIFIED EARLIER THAT YOU  
11:27:02 21 EVENTUALLY MADE A SECURITIES OFFERING, RIGHT?

11:27:04 22 A CORRECT.

11:27:05 23 Q OKAY. APPROXIMATELY WHEN DID THAT HAPPEN?

11:27:10 24 A NOVEMBER 1ST, THE SAME YEAR, 2004.

11:27:13 25 Q OKAY. NOW AT THE TIME THAT YOU ENTERED INTO

11:27:16 1 THIS MUTUAL ASSIGNMENT OF STOCK AGREEMENT WITH  
11:27:20 2 DR. GOOTNICK, WERE YOU ALREADY PLANNING AT THIS  
11:27:23 3 TIME TO EVENTUALLY MAKE THE SECURITIES OFFERING?

11:27:27 4 A YES, AND DR. GOOTNICK, ACCORDING TO -- WELL, I  
11:27:33 5 CAN'T SAY -- I'M NOT SUPPOSED TO SAY WHAT I SAID,  
11:27:36 6 RIGHT?

11:27:42 7 Q OKAY. NOW, DID YOU -- WHAT WAS YOUR INTENT IN  
11:27:47 8 TERMS OF GOING INTO BUSINESS WITH DR. GOOTNICK?  
11:27:49 9 WHAT DID YOU WANT DR. GOOTNICK TO DO FOR YOU, IF  
11:27:54 10 YOU WILL?

11:27:55 11 A TO ASSIST IN THE SECURITIES SOLICITATION.

11:27:59 12 Q AND HOW WOULD HE DO THAT?

11:28:00 13 A TO PARTICIPATE WITH CERTAIN ASSETS FOR  
11:28:20 14 FINANCIAL STRENGTH AND IN A JOINT VENTURE, BUT I  
11:28:23 15 DIDN'T KNOW WHAT HIS ASSETS WERE AT THE TIME.

11:28:25 16 Q OKAY. IF YOU DIDN'T KNOW WHAT DR. GOOTNICK'S  
11:28:28 17 ASSETS WERE AT THE TIME THAT EXHIBIT 1 WAS SIGNED  
11:28:32 18 ON OR ABOUT APRIL 3RD, 2004, WHY WERE YOU WILLING  
11:28:36 19 TO EXCHANGE STOCK?

11:28:37 20 A WELL, IT WOULD HAVE EVEN BEEN BETTER THAN  
11:28:41 21 HAVING ASSETS BEING ABLE TO GO TO THE BANK AND  
11:28:44 22 BORROW MONEY FOR THE CONSOLIDATION AND HE HAD HIS  
11:28:48 23 ONGOING MEDICAL PRACTICE, HE WOULD HAVE BEEN A  
11:28:52 24 GREAT COSIGNER.

11:28:56 25 Q OKAY.

11:28:57 1 A FOR HCHC THAN A SECURITIES OFFERING OR ANY  
11:29:01 2 OTHER WAY IS JUST BORROWED MONEY.

11:29:06 3 Q ALL RIGHT. NOW, BEFORE GOVERNMENT'S EXHIBIT 1  
11:29:12 4 WAS SIGNED ON OR ABOUT APRIL 3RD, 2004, HAD YOU  
11:29:16 5 MADE ANY DISCLOSURES TO DR. GOOTNICK?

11:29:21 6 A WELL, LIKE I DID WITH BROCK AND BOURDIER, AND  
11:29:24 7 I ALSO GAVE GOOTNICK ABOUT A BANKER'S BOX FULL OF  
11:29:29 8 DOCUMENTS AND I MAILED THEM.

11:29:30 9 Q AND TO DR. GOOTNICK?

11:29:31 10 A YES.

11:29:32 11 Q OKAY. AND WHAT DID THE BOX OF DOCUMENTS  
11:29:34 12 CONTAIN?

11:29:35 13 A TRANSACTIONS RELATED TO THE HOTEL AND OLD  
11:29:42 14 APPRAISALS AND A LEASE AND --

11:29:52 15 Q AND DID YOU, BEFORE THE MUTUAL ASSIGNMENT OF  
11:29:55 16 STOCK WAS SIGNED, DID YOU TELL DR. GOOTNICK, DID  
11:30:01 17 YOU DISCLOSE TO DR. GOOTNICK WHAT YOU CONSIDERED TO  
11:30:03 18 BE THE VALUE OF YOUR COMPANY?

11:30:05 19 A THE ONLY VALUE I GAVE HIM -- I DIDN'T DESCRIBE  
11:30:14 20 THE VALUE OF THE HOTEL. I TOLD HIM ABOUT THE  
11:30:18 21 OREGON RANCH.

11:30:20 22 Q OKAY. WHAT IS THE OREGON RANCH?

11:30:22 23 A IT'S A 10 ACRE PROPERTY WITH OVER 6,000 SQUARE  
11:30:26 24 FOOT OF IMPROVEMENTS.

11:30:27 25 Q AND WHO OWNED THAT OREGON RANCH?

11:30:31 1

A HCHC.

11:30:32 2

Q AND WHAT WAS THE -- DID YOU KNOW THE FAIR

11:30:35 3

MARKET VALUE OF THAT RANCH?

11:30:37 4

A I PURCHASED IT BECAUSE THE PEOPLE WERE GOING

11:30:42 5

TO LOSE IT ON THE TAX SALE, THE REAL PROPERTY TAX

11:30:47 6

SALE I WAS TOLD AND I PURCHASED IT FOR \$350,000.

11:30:54 7

SO THE FREE AND CLEAR DEED WAS OWNED BY HCHC.

11:31:00 8

Q AND WHAT ELSE DID YOU TELL DR. GOOTNICK ABOUT

11:31:03 9

THE VALUE OF ANY ASSETS THAT YOUR COMPANY OWNED?

11:31:06 10

A I WAS A LITTLE GUN SHY TO TALK ABOUT VALUES.

11:31:14 11

I MOSTLY TALKED ABOUT WHAT THE ASSETS WERE AND WHAT

11:31:17 12

COULD BE DONE WITH THEM.

11:31:18 13

Q OKAY. DID YOU TELL DR. GOOTNICK OF WHAT THE

11:31:24 14

VERTICAL RIGHTS WERE ABOUT THE HAWAIIN COLONY HOTEL

11:31:27 15

CORPORATION?

11:31:27 16

A YES.

11:31:28 17

Q AND WHAT DID YOU TELL HIM?

11:31:30 18

A THAT YOU PROBABLY COULD BUILD 60 STORIES

11:31:35 19

DEPENDING ON PERMITS.

11:31:37 20

Q AND DID YOU ASSIGN A DOLLAR VALUE TO IT?

11:31:40 21

A NO.

11:31:40 22

Q AND WHY NOT?

11:31:41 23

A IT'S KIND OF HARD TO ASSIGN A VALUE BECAUSE

11:31:51 24

THE VALUE IS SO HIGH.

11:31:53 25

Q OKAY. DID YOU TELL DR. GOOTNICK THAT THERE

11:31:55 1 WAS ANY DISPUTE OVER THE DEVELOPMENT RIGHTS?

11:31:57 2 A I DID. THERE WAS SOME SLANDER CASES, SOME  
11:32:06 3 SLANDER TITLE CASE.

11:32:07 4 Q AND DID YOU MAKE THESE DISCLOSURES BEFORE OR  
11:32:10 5 AFTER THE MUTUAL ASSIGNMENT OF STOCK WAS SIGNED?

11:32:14 6 A BOTH.

11:32:15 7 Q BUT YOU DID MAKE IT BEFORE AS WELL?

11:32:17 8 A YES.

11:32:17 9 Q YOU HEARD TESTIMONY ABOUT THE OMNIBUS RETURN  
11:32:27 10 THAT DR. GOOTNICK FILED WITH OR SENT TO CID.

11:32:33 11 DO YOU REMEMBER THAT?

11:32:34 12 A YES.

11:32:34 13 Q OKAY. NOW, DID YOU HAVE ANY ROLE IN THE  
11:32:37 14 PREPARATION OF THAT OMNIBUS RETURN?

11:32:40 15 A I PREPARED IT.

11:32:41 16 Q OKAY. AND WHEN DID YOU PREPARE THAT?

11:32:43 17 A I THINK IT WAS APRIL 7TH.

11:32:55 18 Q WHAT YEAR?

11:32:55 19 A 2004.

11:32:56 20 Q AND BECAUSE THE MUTUAL ASSIGNMENT OF STOCK IS  
11:32:58 21 DATED APRIL 3RD, 2004, DOES THAT REFRESH YOUR  
11:33:01 22 RECOLLECTION AS TO HOW CLOSE IN TIME THOSE TWO  
11:33:05 23 EVENTS WERE?

11:33:11 24 A YES, I THINK ON APRIL 7TH.

11:33:13 25 Q AND SO IT WAS WITHIN A WEEK OR SO?

11:33:16 1 A YES.

11:33:16 2 Q NOW, YOU PREPARED THE OMNIBUS RETURN, YOU  
11:33:23 3 SAID. WHAT WAS THE PURPOSE IN YOUR PREPARING THE  
11:33:26 4 OMNIBUS RETURN ON BEHALF OF DR. IRWIN GOOTNICK?

11:33:29 5 A EXCUSE ME. WELL, I LIKED DR. GOOTNICK, HE WAS  
11:33:32 6 A PERSONAL FELLOW BUT HE WAS AN N.T.S. MEMBER, AND  
11:33:39 7 I WANTED TO MAKE SURE HE WAS CLEANED UP AND THE  
11:33:42 8 I.R.S. WAS SATISFIED IN GETTING LIENS AGAINST  
11:33:46 9 PROPERTY THAT N.T.S. TRUST HAD OR THE LIEN ITSELF.

11:33:51 10 Q OKAY. AND ANYTHING ELSE IN TERMS OF WHY YOU  
11:33:56 11 PREPARED THE OMNIBUS RETURN FOR DR. GOOTNICK TO  
11:33:58 12 SEND TO CID?

11:33:59 13 A WELL, ALONG WITH, I GOT HIM TO AGREE IN  
11:34:03 14 WRITING, AGREE WITH THE GOVERNMENT'S POSITION AND  
11:34:07 15 THEN MORE IMPORTANTLY I GOT HIM TO PUT IN WRITING  
11:34:09 16 THE DISCLOSURE THAT HE OWED SOME TAX. AND THAT  
11:34:20 17 TRIGGERED THE LIEN.

11:34:21 18 Q OKAY. NOW, I WANT TO PUBLISH A DOCUMENT THAT  
11:34:29 19 HAS ALREADY BEEN ADMITTED INTO EVIDENCE AS  
11:34:31 20 GOVERNMENT'S EXHIBIT 164.

11:34:36 21 DO YOU NEED A COPY OF THAT, MR. O'REILLY?

11:34:39 22 MR. O'REILLY: YES, PLEASE. THANK YOU.

11:34:41 23 BY MR. FONG:

11:34:46 24 Q I WANT TO HAND YOU A COPY, MR. LIGHTER. AND I  
11:35:02 25 WANT TO PUBLISH THIS BECAUSE IT'S ALREADY ADMITTED



11:35:04 1 INTO EVIDENCE.

11:35:05 2 NOW, THIS IS GOVERNMENT'S EXHIBIT 164.

11:35:07 3 FIRST OF ALL, DO YOU SEE THAT DOCUMENT,  
11:35:09 4 SIR?

11:35:09 5 A I DO.

11:35:10 6 Q OKAY. DO YOU RECOGNIZE THAT DOCUMENT?

11:35:12 7 A YES.

11:35:12 8 Q OKAY. WHAT IS YOUR UNDERSTANDING OF WHAT THAT  
11:35:15 9 DOCUMENT IS?

11:35:17 10 A IT'S AN UNFILLED OUT FORM, A TAX FORM TO BE  
11:35:24 11 ATTACHED TO THE OMNIBUS RETURN FOR THIS STANDARD --  
11:35:31 12 AS A NORMAL TAX RETURN OF SORTS TO TRIGGER THE  
11:35:35 13 LIEN.

11:35:35 14 Q OKAY. NOW, THERE'S SOME HANDWRITING ON THE  
11:35:38 15 FIRST PAGE UNDER THE U.S. INDIVIDUAL INCOME TAX  
11:35:43 16 RETURN WITH THE HANDWRITTEN NAMES OF IRWIN GOOTNICK  
11:35:47 17 AND SUSAN GOOTNICK AND THE 329 GOODHILL ROAD,  
11:35:56 18 KENTFIELD, CALIFORNIA ADDRESS.

11:35:58 19 DO YOU SEE THAT?

11:35:59 20 A YES.

11:35:59 21 Q AND WHOSE HANDWRITING IS THAT, IF YOU KNOW?

11:36:02 22 A MINE.

11:36:03 23 Q AND SO YOU FILLED THIS OUT ON BEHALF OF THE  
11:36:05 24 GOOTNICKS?

11:36:05 25 A IT WAS ON THE NAME, ADDRESS AND SOCIAL

11:36:14 1 SECURITY NUMBERS WERE FILLED OUT, NOT THE NUMBERS.

11:36:16 2 Q OKAY. NOW, DID YOU PREPARE THIS DOCUMENT?

11:36:19 3 A YES.

11:36:19 4 Q AND WHAT DID YOU DO WITH IT AFTER YOU PREPARED  
11:36:21 5 IT?

11:36:21 6 A ATTACHED IT TO THE OMNIBUS RETURN.

11:36:26 7 Q AND WHAT DID YOU DO WITH THAT?

11:36:30 8 A I SENT IT TO IRWIN GOOTNICK FOR HIM AND HIS  
11:36:33 9 WIFE TO SIGN AND MAIL IT TO THE I.R.S.

11:36:35 10 Q BUT YOU DID NOT SEND IT TO THE CID I.R.S.  
11:36:38 11 YOURSELF, RIGHT?

11:36:39 12 A NO, I'M IN HAWAII.

11:36:40 13 Q OKAY. IT READS HERE -- DO YOU SEE HOW THERE'S  
11:36:48 14 KIND OF A PASTE ON PARAGRAPH IN ABOUT, OH, MAYBE A  
11:36:55 15 THIRD OF THE WAY DOWN ON EXHIBIT 164?

11:36:57 16 A YES.

11:36:57 17 Q AND IT READS, "OMNIBUS FORM 1120 TAX RETURNS  
11:37:03 18 FOR THE YEARS 2000 THROUGH 2003 FOR GOOTNICK  
11:37:07 19 CHARITABLE TRUST, INC., AND FORM 1040 TAX RETURN  
11:37:11 20 FOR THE YEARS 2000 THROUGH 2003 FOR IRWIN GOOTNICK  
11:37:14 21 AND SUSAN GOOTNICK I.R.S. CID HAS SOLE AND  
11:37:17 22 EXCLUSIVE JURISDICTION FOR ALL TAX MATTERS FOR  
11:37:20 23 THESE YEARS FOR SAID GOOTNICK CHARITABLE TRUST."

11:37:23 24 MS. WONG: OBJECTION, YOUR HONOR. UNLESS  
11:37:24 25 THERE'S A QUESTION PENDING, BUT OTHERWISE THE

11:37:27 1 DOCUMENT SPEAKS FOR ITSELF.

11:37:28 2 THE COURT: MR. FONG, IT SEEMS LIKE IF  
11:37:31 3 YOU COULD ASK THE WITNESS IF HE SEES THE WRITING  
11:37:33 4 AND THEN ASK YOUR QUESTION, THAT MIGHT BE HELPFUL.

11:37:35 5 MR. FONG: SURE. OF COURSE, YOUR HONOR.  
11:37:38 6 THANK YOU.

11:37:38 7 Q DO YOU SEE THE PASTED ON PARAGRAPH THERE?

11:37:44 8 A YES, YES.

11:37:44 9 Q AND WHAT IS YOUR UNDERSTANDING -- FIRST OF  
11:37:46 10 ALL, DID YOU PREPARE THAT?

11:37:47 11 A YES.

11:37:48 12 Q AND WHAT WAS YOUR, WHAT WAS YOUR UNDERSTANDING  
11:37:52 13 OF WHAT THAT PARAGRAPH WAS MEANT TO DO?

11:37:54 14 A REFERENCING AND COMBINE OR MERGE THESE BLANK  
11:38:02 15 SIGNED TAX FORMS OR ORDINARY TAX FORMS WITH THE  
11:38:09 16 OMNIBUS RETURN.

11:38:11 17 Q AND WHAT IS THE PURPOSE OF DOING THAT?

11:38:13 18 A I DID NOT WANT THE I.R.S. TO IGNORE THE  
11:38:18 19 OMNIBUS RETURN ON THE BASIS THAT THERE'S NO  
11:38:20 20 ORDINARY TAX RETURNS ATTACHED.

11:38:22 21 Q OKAY. SO THIS WAS MEANT, IN YOUR MIND, THIS  
11:38:25 22 WAS MEANT TO PROVIDE ADDITIONAL INFORMATION TO WHAT  
11:38:27 23 THE OMNIBUS RETURN HAD?

11:38:29 24 A IT WAS JURISDICTION SO TO MAKE SURE THAT THE  
11:38:39 25 TAX LIENS ATTACH.

11:38:39 1 Q NOW, EXHIBIT 164, IF YOU COULD LOOK THROUGH  
11:38:43 2 IT, IT'S BLANK, RIGHT, IN TERMS OF THE ENTRIES, THE  
11:38:51 3 VARIOUS LINE ENTRIES?

11:38:52 4 A CORRECT.

11:38:52 5 Q AND DID YOU PURPOSELY DO THAT?

11:38:55 6 A YES.

11:38:56 7 Q AND WHY?

11:38:56 8 A BECAUSE I DIDN'T KNOW THE NUMBERS AND BEING  
11:38:59 9 ABLE TO ESTABLISH FURTHER JURISDICTION FOR THE  
11:39:01 10 LIENS, THAT'S ALL I'M DOING.

11:39:02 11 Q OKAY. AND BY FILING GOVERNMENT'S EXHIBIT 154,  
11:39:07 12 ALONG WITH THE GOOTNICK'S OMNIBUS RETURN OR BY  
11:39:12 13 HAVING THE GOOTNICKS DO THAT, WHAT DID YOU THINK  
11:39:14 14 WAS GOING TO HAPPEN? WHAT WAS THE INTENT BEHIND  
11:39:17 15 IT?

11:39:17 16 A THAT THE I.R.S. LIEN ATTACHED TO THE GOOTNICKS  
11:39:25 17 HAD THEIR TRUSTS AND THEIR ASSETS.

11:39:27 18 Q OKAY.

11:39:28 19 A AND THEREBY AND THEREFORE CLEANING UP THE  
11:39:31 20 GOOTNICKS AND THEIR TRUST, N.T.S. TRUST.

11:39:34 21 Q OKAY. NOW, AFTER YOU HELPED PREPARE  
11:39:44 22 GOVERNMENT'S EXHIBIT 164 AND THE OMNIBUS RETURN FOR  
11:39:47 23 THE GOOTNICKS, DID YOU DO ANYTHING -- DID YOU HAVE  
11:39:49 24 ANY OTHER BUSINESS TRANSACTIONS OR DEALINGS WITH  
11:39:53 25 DR. IRWIN GOOTNICK?

11:39:54 1 A THEREAFTER?

11:39:55 2 Q YES.

11:39:56 3 A YES.

11:39:57 4 Q OKAY. AND APPROXIMATELY WHEN?

11:39:58 5 A APPROXIMATELY A MONTH LAYER. ACTUALLY RIGHT  
11:40:07 6 AWAY. I ASKED FOR -- IF MY COMPANY COULD BORROW  
11:40:13 7 MONEY SECURED BY A MORTGAGE.

11:40:15 8 Q OKAY. AND HOW MUCH DID YOU ASK FOR? WELL,  
11:40:19 9 I'M SORRY. YOU ASKED WHO, DR. IRWIN GOOTNICK?

11:40:23 10 A YES.

11:40:23 11 Q FOR A LOAN?

11:40:26 12 A A MORTGAGE LOAN.

11:40:27 13 Q WELL, THAT IS TO SAY -- WELL, WHAT DO YOU MEAN  
11:40:30 14 BY THAT?

11:40:30 15 A A LOAN SECURED BY A REAL PROPERTY.

11:40:32 16 Q OKAY. AND HOW MUCH OF A LOAN DID YOU ASK FOR?

11:40:34 17 A 125,000.

11:40:37 18 Q AND DID DR. GOOTNICK AGREE TO PROVIDE YOU WITH  
11:40:40 19 THE LOAN?

11:40:41 20 A YES, A REDUCED AMOUNT. I ASKED FOR TWO  
11:40:46 21 PROPERTIES AND HE APPROVED IT FOR ONE PROPERTY IN  
11:40:47 22 THE AMOUNT OF 50,000.

11:40:48 23 Q ALL RIGHT. SO HE AGREED TO LEND YOU \$50,000?

11:40:52 24 A MY COMPANY, YES.

11:40:56 25 Q AND YOUR COMPANY. WHICH COMPANY WOULD THAT

11:40:59 1 BE?

11:40:59 2 A VOLCANO GARDENS, INC.

11:41:03 3 Q AND THAT'S A COMPANY THAT YOU OWN?

11:41:05 4 A I'M AN OFFICER AND A DIRECTOR.

11:41:06 5 Q AND DID YOU HAVE ANY OWNERSHIP INTEREST IN  
11:41:10 6 VOLCANO GARDEN, INC.?

11:41:11 7 A I DON'T THINK SO.

11:41:12 8 Q BUT YOU WERE AFFILIATED WITH IT?

11:41:15 9 A YES.

11:41:15 10 Q NOW, WHAT DID YOU OFFER IN TERMS OF SECURITY  
11:41:17 11 FOR THE \$50,000 LOAN FROM DR. IRWIN GOOTNICK?

11:41:20 12 A A FREE AND CLEAR 3 ACRE LOT THAT WAS PURCHASED  
11:41:26 13 YEARS EARLIER FOR \$75,000 CASH.

11:41:29 14 Q AND WHERE WAS THIS LOT?

11:41:30 15 A VOLCANO HAWAII NEXT TO THE NATIONAL PARK.

11:41:35 16 Q OKAY. DID YOU HAVE -- AT THE TIME YOU OFFERED  
11:41:42 17 THAT PROPERTY FOR THE \$50,000 SECURITY LOAN FROM  
11:41:47 18 DR. IRWIN GOOTNICK, DID YOU HAVE ANY BELIEF AS TO  
11:41:50 19 WHAT WAS THE VALUE OF THAT LOT?

11:41:52 20 A IT WAS \$150,000.

11:42:01 21 Q I'M SORRY?

11:42:02 22 A IT WAS WORTH \$150,000 APPROXIMATELY.

11:42:05 23 Q AND HOW DID YOU COME TO THAT BELIEF?

11:42:08 24 MS. WONG: OBJECTION, RELEVANCE.

11:42:08 25 THE COURT: YOU CAN ANSWER THE QUESTION.

11:42:15 1 THE WITNESS: I UNDERSTOOD THE MARKET  
11:42:16 2 BECAUSE I HAVE A REAL ESTATE BACKGROUND AND I ALSO  
11:42:24 3 GOT AN APPRAISAL THAT I CONFIRMED WITH.

11:42:27 4 BY MR. FONG:

11:42:27 5 Q OKAY. WAS THERE ANY DOCUMENT THAT YOU  
11:42:40 6 PREPARED IN CONNECTION WITH THE \$50,000 LOAN, THE  
11:42:46 7 \$50,000 LOAN THAT YOU RECEIVED FROM DR. IRWIN  
11:42:48 8 GOOTNICK?

11:42:48 9 A YES, I SENT HIM A DRAFT MORTGAGE AND NOTE AND  
11:42:56 10 LATER I SENT HIM A COVER LETTER.

11:43:06 11 Q I'M SORRY? ANYTHING ELSE INSOFAR AS THE  
11:43:09 12 \$50,000 LOAN?

11:43:10 13 A I DON'T THINK SO.

11:43:11 14 Q I'M GOING TO SHOW YOU A DOCUMENT THAT HAS BEEN  
11:43:13 15 PREMARKED FOR IDENTIFICATION ONLY AS DEFENSE  
11:43:15 16 EXHIBIT GG, GARY, GARY.

11:43:36 17 FIRST OF ALL, SIR, DO YOU SEE THAT  
11:43:38 18 DOCUMENT IN FRONT OF YOU?

11:43:39 19 A YES.

11:43:39 20 Q AND DO YOU RECOGNIZE THAT DOCUMENT?

11:43:41 21 A YES.

11:43:41 22 Q AND WHAT IS THAT DOCUMENT THAT IS MARKED AS  
11:43:44 23 DEFENSE EXHIBIT GG?

11:43:45 24 A IT'S A RECORD \$50,000 FIRST MORTGAGE ON THE  
11:43:52 25 VOLCANO 3 ACRE LOT.

11:43:54 1 Q AND WHAT WAS THE PURPOSE OF EXHIBIT GG?

11:43:59 2 A TO SECURE THE \$50,000 LOAN.

11:44:05 3 MR. FONG: YOUR HONOR, I'M GOING TO MOVE  
11:44:07 4 INTO -- OH, I'M SORRY.

11:44:12 5 Q ON PAGE 3 OF EXHIBIT GG, DO YOU SEE PAGE 3?

11:44:17 6 A YES.

11:44:17 7 Q AND THERE'S A SIGNATURE THERE, A BLOCK FOR  
11:44:20 8 ERIC LIGHTER. DO YOU SEE THAT?

11:44:22 9 A YES.

11:44:22 10 Q AND IS THAT YOUR SIGNATURE?

11:44:23 11 A YES.

11:44:23 12 Q AND WHERE WERE YOU WHEN YOU SIGNED THAT?

11:44:25 13 A HAWAII.

11:44:26 14 Q OKAY. AND THEN WHAT DID YOU DO WITH THIS  
11:44:33 15 DOCUMENT AFTER YOU SIGNED IT?

11:44:34 16 A I SENT IT TO DR. GOOTNICK WHO SIGNED IT IN  
11:44:39 17 FRONT OF A NOTARY.

11:44:39 18 Q BUT YOU DIDN'T SEE DR. GOOTNICK SIGN IT IN  
11:44:42 19 FRONT OF A NOTARY?

11:44:43 20 A NO.

11:44:43 21 Q DID YOU EVER GET THIS DOCUMENT BACK FROM  
11:44:47 22 DR. GOOTNICK WITH HIS SIGNATURE AND A NOTARY STAMP?

11:44:50 23 A YES.

11:44:51 24 MR. FONG: YOUR HONOR, I WOULD MOVE  
11:44:52 25 EXHIBIT GG INTO EVIDENCE.



11:44:54 1  
11:44:56 2  
11:44:57 3  
11:44:59 4  
11:45:00 5  
11:45:02 6  
11:45:03 7  
11:45:08 8  
11:45:11 9  
11:45:15 10  
11:45:18 11  
11:45:19 12  
11:45:29 13  
11:45:30 14  
11:45:31 15  
11:45:32 16  
11:45:32 17  
11:45:34 18  
11:45:35 19  
11:45:38 20  
11:45:41 21  
11:45:43 22  
11:45:48 23  
11:45:50 24  
11:45:54 25

MS. WONG: OBJECTION, HEARSAY.

THE WITNESS: IT'S A RECORDED DOCUMENT.

THE COURT: I BEG YOUR PARDON, SIR. YOU  
HAVE TO WAIT. THE RESPONSE IS STRICKEN.

MR. FONG: YOU'RE NOT --

THE COURT: DO YOU HAVE A RESPONSE?

MR. FONG: YES, YOUR HONOR, YEAH. IT'S A  
DOCUMENT THAT SIMPLY SHOWS THAT THIS MORTGAGE WAS  
RECORDED WITH THE STATE OF HAWAII SHOWING THAT IT  
WAS USE OF SECURITY FOR THE \$50,000 LOAN.

THE COURT: THANK YOU. I'LL SUSTAIN THE  
OBJECTION.

BY MS. WONG:

Q BUT YOU DID RECEIVE THIS DOCUMENT BACK FROM  
DR. GOOTNICK?

A YES.

Q AND WHAT DID YOU DO WITH THE DOCUMENT THEN?

A I HAD RECORDED IT.

Q RECORDED IT WHERE?

A THE HAWAII BUREAU OF CONVEYANCES, THE  
STATEWIDE VERSION OF THE COUNTY RECORDER.

Q OKAY. NOW, BESIDES THE MORTGAGE, WAS THERE  
ANY OTHER DOCUMENT THAT WAS PREPARED IN CONNECTION  
WITH THE \$50,000 LOAN?

A ONE OF TWO PROMISSORY NOTES.

11:45:57 1 Q OKAY. I'M GOING TO SHOW YOU A DOCUMENT THAT  
11:46:13 2 HAS BEEN MARKED BBB, B AS IN BOY. AND DID YOU SEE  
11:46:25 3 THE ONE-PAGE DOCUMENT THAT IS DEFENSE EXHIBIT BBB  
11:46:28 4 IN FRONT OF YOU, SIR?

11:46:29 5 A YES.

11:46:29 6 Q AND HAVE YOU SEEN THAT DOCUMENT BEFORE?

11:46:30 7 A YES.

11:46:31 8 Q AND WHAT IS YOUR UNDERSTANDING OF WHAT THIS  
11:46:32 9 DOCUMENT IS?

11:46:32 10 A IT'S THE PROMISSORY NOTE, THE FIRST PROMISSORY  
11:46:37 11 NOTE WITH THE \$50,000 MORTGAGE.

11:46:40 12 Q OF THE \$50,000 LOAN THAT YOU RECEIVED FROM  
11:46:42 13 DR. GOOTNICK?

11:46:43 14 A YES, YES.

11:46:44 15 Q AND YOU SAID THIS WAS THE FIRST. WAS THERE A  
11:46:46 16 SECOND?

11:46:46 17 A THERE WAS. THERE WAS A HANDWRITTEN INSERTION  
11:46:51 18 OF THE WORD "MAY." DR. GOOTNICK DID NOT WANT TO  
11:47:00 19 HAVE ANY TYPE OF GRAPHICAL ERRORS SO HE WOULDN'T  
11:47:05 20 FUND UNTIL I CORRECTED THE ERROR.

11:47:06 21 Q AND DID YOU MAKE THAT CORRECTION?

11:47:07 22 A YES.

11:47:08 23 Q OKAY. NOW, DID YOU SIGN DEFENDANT'S EXHIBIT  
11:47:14 24 BBB?

11:47:15 25 A YES.

11:47:15 1 Q AND HOW MANY TIMES DID YOU SIGN?

11:47:16 2 A TWICE.

11:47:17 3 Q OKAY. AND WHY WAS THAT?

11:47:20 4 A BECAUSE THIS SEALS MY GUARANTORSIHP.

11:47:24 5 Q I'M SORRY?

11:47:25 6 A THE CORPORATION WAS ONE, ME AS THE DEBTOR, AND  
11:47:38 7 ONE WAS THE GUARANTOR.

11:47:40 8 Q AND I UNDERSTOOD THAT YOU SIGNED PERSONALLY AS  
11:47:42 9 A GUARANTOR BUT YOU SAID THE FIRST ONE WAS WHAT?

11:47:45 10 A THE CORPORATION AS A DEBTOR.

11:47:47 11 Q AND YOU SIGNED ON BEHALF OF THE CORPORATION?

11:47:49 12 A AS ITS OFFICER, YES.

11:47:51 13 Q OKAY. NOW, AFTER THIS PARTICULAR TRANSACTION,  
11:48:02 14 THE \$50,000 LOAN WITH DR. GOOTNICK, DID YOU HAVE  
11:48:09 15 ANY OTHER BUSINESS DEALINGS WITH DR. GOOTNICK?

11:48:11 16 A YES.

11:48:12 17 Q AND WHAT ELSE?

11:48:12 18 A IN AUGUST -- WELL, FIRST OF ALL, THE  
11:48:18 19 CORPORATION MADE PAYMENTS ON THE MORTGAGE.

11:48:19 20 Q ON THE \$50,000 LOAN?

11:48:22 21 A YES.

11:48:22 22 Q OKAY.

11:48:23 23 A SECONDLY NEXT WAS IN AUGUST OF -- IN AUGUST OF  
11:48:32 24 2004 I WAS SUCCESSFUL IN THE COMPANY DEVELOPMENT.

11:48:36 25 Q AND THAT'S RELATING TO THE ROYAL PATENTS?

11:48:38 1 A ROYAL PATENT.

11:48:39 2 Q AND HOW DID THAT RELATE TO DR. GOOTNICK?

11:48:43 3 A ON AUGUST 4TH, I PROMISED HIM THAT IF I WAS  
11:48:48 4 SUCCESSFUL THAT I WOULD GIVE HIM -- HE COULD HAVE  
11:48:53 5 10 PERCENT OF THE COMPANY TO BE A NEGOTIATED PRICE.  
11:48:56 6 IT WAS AN ORAL OPTION.

11:48:59 7 Q SO YOU GAVE DR. GOOTNICK AN ORAL OPTION FOR  
11:49:02 8 HIM TO INVEST IN THE ROYAL PATENT DEVELOPMENT  
11:49:08 9 INsofar AS IT RELATES TO THE PROPERTY ON KAUAI; IS  
11:49:12 10 THAT CORRECT?

11:49:12 11 A CORRECT.

11:49:13 12 MS. WONG: OBJECTION. ASKED AND  
11:49:14 13 ANSWERED.

11:49:14 14 THE COURT: SUSTAINED. THE ANSWER IS  
11:49:16 15 STRICKEN.

11:49:17 16 BY MR. FONG:

11:49:22 17 Q DID DR. GOOTNICK EVER TAKE YOU UP ON YOUR  
11:49:25 18 OFFER OF THE ORAL OPTION?

11:49:27 19 A YES, MARCH 17TH, 2004 HE BOUGHT 10 PERCENT OF  
11:49:33 20 THE ROYAL PATENT COMPANY WHICH WAS ALSO A MAUI  
11:49:38 21 INTEREST.

11:49:38 22 Q OKAY. BUT THAT WAS LATER. THAT WAS WHAT,  
11:49:42 23 ALMOST HALF A YEAR LATER?

11:49:43 24 A YES.

11:49:44 25 Q OKAY. OKAY. BUT AT THE TIME IN AUGUST OF

11:49:52 1 2004 YOU MADE THIS OPTION?

11:49:54 2 A YES, AND IT WAS SIGNED BUT WITH THE KAUAI  
11:49:59 3 SELLERS.

11:49:59 4 Q BUT DR. GOOTNICK WAS NOT PART OF THAT  
11:50:02 5 DOCUMENT, WAS HE?

11:50:02 6 A NO.

11:50:03 7 Q OKAY. AND DID DR. GOOTNICK INDICATE THAT HE  
11:50:09 8 WAS INTERESTED IN THIS KAUAI DEVELOPMENT?

11:50:12 9 A YES.

11:50:12 10 Q OKAY. NOW, THEN AFTER THAT, THIS IS -- NOW  
11:50:16 11 WE'RE IN AUGUST OF 2004, DID YOU HAVE ANY OTHER  
11:50:18 12 BUSINESS DEALINGS OR TRANSACTIONS WITH  
11:50:21 13 DR. GOOTNICK?

11:50:21 14 A OCTOBER 8TH THERE WAS A TRANSACTION.

11:50:33 15 Q OKAY. AND WHAT WAS THAT TRANSACTION TO THE  
11:50:35 16 BEST OF YOUR RECOLLECTION?

11:50:36 17 A WELL, IN LATE SEPTEMBER HE INFORMED ME AND I  
11:50:50 18 FAXED OUT HANDWRITTEN AND PRINTED FINANCIAL  
11:50:53 19 STATEMENTS SO THAT I COULD DETERMINE WHAT HAD TO BE  
11:50:57 20 DONE AND THE IDEA WAS THAT I WAS GOING TO BUY GCTI,  
11:51:03 21 THE BALANCE OF THE STOCK OF GCTI.

11:51:09 22 Q AND WHY DID THIS DISCUSSION EVEN TAKE PLACE IN  
11:51:12 23 THE FIRST PLACE THAT YOU WOULD END UP BUYING THE  
11:51:15 24 ASSETS, ALL OF THE ASSETS OF GCTI?

11:51:18 25 A TWO REASONS. IT WAS SUPPOSED TO GREATLY

11:51:26 1 ENHANCE THE SECURITIES OFFERING WHICH WAS FILED

11:51:30 2 NOVEMBER 1ST, AND, SECONDLY, GOOTNICK --

11:51:32 3 Q NOVEMBER 1ST OF WHAT YEAR? I'M SORRY?

11:51:34 4 A 2004.

11:51:35 5 Q SO THAT WOULD BE ABOUT A MONTH, A MONTH AFTER?

11:51:38 6 A CORRECT.

11:51:39 7 Q OKAY. SO I'M SORRY. GO AHEAD, PLEASE.

11:51:42 8 A AND THE SECOND REASON WAS THAT GOOTNICK FOR

11:51:48 9 SOME REASON WANTED NOTHING DO WITH TALKING WITH THE

11:51:51 10 I.R.S. OR DEALING WITH THE I.R.S. SO IF I BOUGHT

11:51:54 11 THE COMPANY, THAT WOULD BE MY LIABILITY OR MY DUTY.

11:51:58 12 Q NOW, YOU SAID THAT DR. GOOTNICK HAD SENT YOU

11:52:11 13 SOME HANDWRITTEN FORM?

11:52:13 14 A FINANCIAL STATEMENTS.

11:52:14 15 Q OKAY. AND I'M GOING TO SHOW YOU A DOCUMENT

11:52:22 16 THAT HAS BEEN MARKED FOR IDENTIFICATION ONLY AS II,

11:52:26 17 THAT'S IVAN, IVAN TWICE.

11:52:41 18 MR. LIGHTER?

11:52:42 19 A YES.

11:52:42 20 Q AND DO YOU SEE EXHIBIT II IN FRONT OF YOU?

11:52:46 21 A YES.

11:52:46 22 Q AND IS IT APPROXIMATELY FIVE OR SIX PAGES?

11:52:48 23 A YES.

11:52:48 24 Q OKAY. AND IS EXHIBIT II -- WELL, WHAT IS

11:52:57 25 EXHIBIT II IN GENERAL, WITHOUT TALKING ABOUT THE

11:52:59 1 SPECIFIC CONTENT? WHAT DO YOU UNDERSTAND IT TO BE?

11:53:01 2 A GCTI'S, GOOTNICK CHARITABLE TRUST INC.'S,  
11:53:08 3 FINANCIAL STATEMENT. THIS IS THE FOLLOW-UP TO HIS  
11:53:10 4 E-MAIL A FEW DAYS EARLIER WHERE HE FINALLY TOLD ME  
11:53:14 5 WHAT HIS GENERAL NET WORTH WAS.

11:53:17 6 Q OKAY. NOW -- AND THIS WAS GIVEN TO YOU  
11:53:19 7 APPROXIMATELY WHEN?

11:53:20 8 A THE FAX LOGO SAYS ON IT OCTOBER 3RD --  
11:53:30 9 OCTOBER 6TH.

11:53:30 10 Q OCTOBER 3RD OF WHAT YEAR?

11:53:33 11 A 2004.

11:53:35 12 Q AND BEFORE YOU RECEIVED THE DOCUMENT THAT IS  
11:53:37 13 DEFENSE EXHIBIT II, HAD YOU RECEIVED ANY FINANCIAL  
11:53:40 14 STATEMENTS OR FINANCIAL DISCLOSURES IN WRITING FROM  
11:53:43 15 DR. IRWIN GOOTNICK?

11:53:44 16 A ABOUT SEPTEMBER 27TH AN E-MAIL.

11:53:48 17 Q OKAY. AND WHAT DID THAT -- AND IT WAS AN  
11:53:53 18 E-MAIL CONCERNING DR. GOOTNICK'S FINANCIAL  
11:53:56 19 INFORMATION?

11:54:00 20 A YES.

11:54:00 21 Q OKAY. BEFORE THAT HAD YOU EVER RECEIVED ANY  
11:54:02 22 DISCLOSURE FROM DR. IRWIN GOOTNICK AS TO HIS  
11:54:05 23 FINANCIAL STATEMENT OR ASSETS AND LIABILITIES?

11:54:09 24 A NO.

11:54:09 25 Q OKAY. I THINK BACK IN ACTUALLY IN MARCH, IN

11:54:18 1 LATE MARCH GCTI --

11:54:34 2 MS. WONG: OBJECTION, YOUR HONOR,  
11:54:35 3 HEARSAY.

11:54:35 4 THE COURT: SUSTAINED. IT'S STRICKEN.  
11:54:38 5 BY MR. FONG:

11:54:39 6 Q OKAY. AFTER YOU RECEIVED THE FINANCIAL  
11:54:42 7 STATEMENT FROM DR. GOOTNICK, MR. LIGHTER, DID YOU  
11:54:45 8 THEN -- DID YOU AND DR. GOOTNICK THEN ENTER INTO  
11:54:48 9 ANY BUSINESS TRANSACTIONS?

11:54:49 10 A YES, A BILL OF SALE, TWO BILLS OF SALE AND A  
11:54:54 11 PROMISSORY NOTE.

11:54:54 12 Q FIRST OF ALL, LET'S TAKE THEM ONE AT A TIME.

11:54:57 13 THE FIRST BILL OF SALE, WHEN WAS THAT  
11:55:00 14 SIGNED?

11:55:00 15 A THEY WERE ALL THREE SIGNED ON OCTOBER 8TH,  
11:55:06 16 MINE IN HAWAII AND THEIRS IN CALIFORNIA.

11:55:07 17 Q AND WHO PREPARED THE BILL OF SALE?

11:55:11 18 A I DID WITH DR. GOOTNICK'S INPUT.

11:55:13 19 Q OKAY. NOW, WHAT DID THE BILL OF SALE DO?

11:55:24 20 A IT SOLD TO ME 90 PERCENT OF GCTI, GOOTNICK  
11:55:31 21 CHARITABLE TRUST, INC.

11:55:32 22 Q OKAY. AND WHAT -- AND WHAT DID YOU UNDERSTAND  
11:55:37 23 GCTI TO BE THE OWNER OF? WHAT KIND OF PROPERTIES,  
11:55:41 24 IF ANY?

11:55:42 25 A THERE WAS -- WELL, ATTACHED TO THE BILL OF



11:55:46 1 SALE IS THE FINAL VERSION OF THE GOOTNICK'S  
11:55:50 2 FINANCIAL STATEMENT AS WAS IN HIS TRUST.

11:55:54 3 Q AND DOES GCTI THEN, IS IT YOUR UNDERSTANDING  
11:55:57 4 AT THE TIME THAT GCTI WAS THE OWNER OF THE VARIOUS  
11:56:03 5 GOOTNICK'S TRUST LIKE FAMILY TRUSTS AND OTHER  
11:56:05 6 TRUSTS?

11:56:06 7 A YES.

11:56:06 8 Q AND THE OTHER ASSETS HELD BY THOSE TRUSTS?

11:56:08 9 A YES.

11:56:08 10 Q OKAY. NOW, WHAT WERE THE TERMS OF THIS BILL  
11:56:14 11 OF SALE BY WHICH YOU ACQUIRED THE OWNERSHIP OR THE  
11:56:17 12 STOCK OF GCTI?

11:56:19 13 MS. WONG: OBJECTION, YOUR HONOR. TO THE  
11:56:21 14 EXTENT THAT THE DEFENDANT IS TESTIFYING TO THE  
11:56:23 15 CONTENTS OF THE DOCUMENT, THE DOCUMENT SPEAKS FOR  
11:56:27 16 ITSELF.

11:56:27 17 MR. FONG: THE DOCUMENT IS NOT EVEN IN  
11:56:29 18 FRONT OF THE DEFENDANT.

11:56:30 19 THE COURT: YOU'RE NOT OFFERING THE  
11:56:31 20 DOCUMENT NOW?

11:56:31 21 MR. FONG: NOT YET.

11:56:35 22 MS. WONG: YOUR HONOR, THE DOCUMENT IS  
11:56:36 23 ALREADY IN EVIDENCE.

11:56:51 24 MR. FONG: OKAY.

11:56:53 25 Q NOW, MR. LIGHTER, DO YOU SEE GOVERNMENT'S

11:56:55 1 EXHIBIT 18?

11:56:56 2 A YES.

11:56:56 3 Q AND IS THIS THE BILL OF SALE THAT YOU HAVE  
11:56:58 4 BEEN TALKING ABOUT?

11:56:59 5 A YES.

11:56:59 6 Q OKAY.

11:57:00 7 A ONE OF THEM.

11:57:01 8 Q ONE OF THEM. AND THIS CARRIES THE DATE OF  
11:57:04 9 OCTOBER 8TH, 2004; IS THAT TRUE?

11:57:07 10 A YES.

11:57:07 11 Q OKAY. AND WHAT WAS THE PURPOSE BEHIND THIS  
11:57:11 12 BILL OF SALE FROM YOUR PERSPECTIVE? WHAT WAS IT  
11:57:16 13 SUPPOSED TO DO?

11:57:16 14 A SINCE THE I.R.S. ALREADY HAD LIENS ON ALL OF  
11:57:22 15 THESE ASSETS, I WASN'T TRYING TO CLEAN THEM UP.  
11:57:26 16 THEY WERE ALREADY IN MY MIND CLEANED OUT, EXCEPT  
11:57:28 17 FOR THE PAYMENT OF THE TAXES. SO I BOUGHT THE  
11:57:35 18 BALANCE, THE 90 PERCENT BALANCE OF THE STOCK OF  
11:57:41 19 GCTI AND AGREED TO PAY WHATEVER TAXES THERE WERE  
11:57:44 20 BASED ON THE ATTACHED FINANCIAL STATEMENT.

11:57:52 21 Q AND I'M GOING TO DIRECT YOUR ATTENTION TO PAGE  
11:57:54 22 2 OF EXHIBIT 18.

11:57:55 23 DO YOU SEE ABOUT THE FOURTH PARAGRAPH OF  
11:57:59 24 EXHIBIT 18, PAGE 2?

11:58:00 25 A YES.

11:58:01 1 Q GRANTEE -- FIRST OF ALL, WHO IS GRANTEE?

11:58:03 2 A I AM.

11:58:05 3 Q YOU OR HCHC?

11:58:07 4 A I AM. IT'S ME INDIVIDUALLY.

11:58:11 5 Q OKAY. "GRANTEE EXPRESSLY COVENANTS THAT  
11:58:15 6 GRANTEE ASSUMES ALL INDEBTEDNESS FOR DIRECT TAXES,  
11:58:20 7 PENALTIES, AND INTEREST PAST, AND CURRENT, ARISING  
11:58:24 8 FROM OR RELATED TO OPERATION OF GCTI AND/OR ITS  
11:58:29 9 ABOVE SAID SUBSIDIARIES."

11:58:32 10 IS THAT WHAT IT SAYS?

11:58:33 11 A YES.

11:58:33 12 Q AND IS THAT WHAT YOU WERE TESTIFYING TO A  
11:58:36 13 LITTLE WHILE AGO WHEN YOU WERE TESTIFYING ABOUT THE  
11:58:39 14 ASSUMING TAX LIABILITIES?

11:58:40 15 A YES.

11:58:41 16 Q AND IS THIS SOMETHING THAT DR. GOOTNICK WANTED  
11:58:43 17 IN THE AGREEMENT?

11:58:44 18 A YES.

11:58:44 19 Q OKAY. NOW, WAS THIS THE ONLY DOCUMENT THAT  
11:58:57 20 REFLECTED THE TRANSACTION THAT YOU AND DR. GOOTNICK  
11:58:59 21 WERE ENTERING INTO?

11:59:01 22 A THERE WAS ANOTHER BILL OF SALE.

11:59:05 23 Q OKAY. AND I BELIEVE NUMBER 19, WHAT WAS YOUR  
11:59:21 24 UNDERSTANDING AS TO WHAT THE SECOND BILL OF SALE  
11:59:23 25 WAS SUPPOSED TO DO?

11:59:24 1 MS. WONG: OBJECTION, YOUR HONOR. ONCE  
11:59:25 2 AGAIN THE DOCUMENT SPEAKS FOR ITSELF AND IT IS IN  
11:59:28 3 EVIDENCE.

11:59:29 4 MR. FONG: OKAY.

11:59:30 5 THE COURT: I'LL SUSTAIN THE OBJECTION.  
11:59:31 6 YOU CAN ASK ANOTHER QUESTION.

11:59:32 7 BY MR. FONG:

11:59:34 8 Q OKAY. MR. LIGHTER, I WANT TO SHOW YOU THE  
11:59:39 9 FIRST PAGE OF EXHIBIT 19.

11:59:42 10 DO YOU SEE THAT, SIR?

11:59:44 11 A YES.

11:59:44 12 Q AND IS THIS A SECOND BILL OF SALE THAT YOU'RE  
11:59:47 13 REFERRING TO?

11:59:47 14 A YES, BUT THIS IS PAGE 2.

11:59:52 15 Q OKAY. BUT YOU DO RECOGNIZE THIS AS THE FIRST  
11:59:54 16 PAGE OF THAT BILL OF SALE?

11:59:56 17 A YES, YES.

11:59:56 18 Q OKAY. AND WHAT IS YOUR UNDERSTANDING OF WHAT  
11:59:59 19 THIS DOCUMENT DID?

12:00:00 20 A SUSAN GOOTNICK OWED 450 SHARES OF GCTI AND SHE  
12:00:11 21 WAS GOING SELL IT BACK TO THE CORPORATION AS  
12:00:13 22 TREASURY STOCK SO THAT THE COMPANY WHEN I BOUGHT IT  
12:00:17 23 WOULD HAVE 90 PERCENT OF THE SHARES.

12:00:19 24 Q OKAY. SO IT'S A WAY TO COMPLETE THE  
12:00:22 25 TRANSACTION?

12:00:22 1  
12:00:24 2  
12:00:26 3  
12:00:34 4  
12:00:35 5  
12:00:37 6  
12:00:39 7  
12:00:49 8  
12:00:53 9  
12:01:00 10  
12:01:03 11  
12:01:05 12  
12:01:06 13  
12:01:08 14  
12:01:08 15  
12:01:10 16  
12:01:12 17  
12:01:19 18  
12:01:22 19  
12:01:26 20  
12:01:29 21  
12:01:33 22  
12:01:35 23  
12:01:38 24  
12:01:40 25

A YES.

Q OKAY. NOW, WAS THERE ANY OTHER DOCUMENT THAT WAS PREPARED IN CONNECTION WITH THIS TRANSACTION?

A A PROMISSORY NOTE.

Q OKAY. AND WHAT DID THE PROMISSORY NOTE PROVIDE, IF YOU KNOW?

A FOR PAYMENTS AND A DOLLAR FOR DOLLAR CREDIT REDUCTION TO REDUCE THE PROMISSORY NOTE BY EVERY DOLLAR OF TAXES I HAPPENED TO PAY FOR RELATING TO THAT EARLIER PARAGRAPH THAT YOU SHOWED ME.

Q AND HOW MUCH WAS THE PROMISSORY NOTE FOR?

A 2 MILLION.

Q \$2 MILLION?

A CORRECT.

Q AND SO THE PROMISSORY NOTE AND WHAT WAS THE \$2 MILLION SUPPOSED TO DO?

A SIMPLY TRANSFER THE STOCK TO ME.

Q SO THAT'S THE PURCHASE PRICE FOR THE TRANSFER OF THE GCTI STOCK TO YOU?

A THE PURCHASE PRICE WAS A \$2 MILLION NOTE AND ALL OF THE TAX LIABILITIES THAT I ASSUMED.

Q OKAY. BUT THERE'S ALSO -- WELL, YOU MENTIONED -- WAS THERE ANY KIND OF OFFSET FOR ANY TAX LIABILITY THAT YOU ACTUALLY ENDED UP PAYING?

MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:01:43 1 THE COURT: YOU CAN ANSWER THE QUESTION,  
12:01:44 2 SIR.

12:01:44 3 THE WITNESS: YES, IT'S PART OF THE NOTE  
12:01:47 4 OR THE LANGUAGE OF THE NOTE.

12:01:50 5 BY MR. FONG:

12:01:51 6 Q OKAY. DIRECTING YOUR ATTENTION TO -- I'M  
12:02:02 7 GOING TO HAND YOU A COPY OF WHAT HAS BEEN MARKED AS  
12:02:06 8 DEFENSE EXHIBIT L AS IN LARRY.

12:02:15 9 DO YOU SEE THAT DOCUMENT IN FRONT OF YOU,  
12:02:17 10 SIR?

12:02:17 11 A YES.

12:02:17 12 Q AND ON PAGE 2 OF EXHIBIT L THERE'S A SIGNATURE  
12:02:23 13 ON THE UPPER RIGHT-HAND CORNER.

12:02:25 14 DO YOU SEE THAT?

12:02:26 15 A YES.

12:02:26 16 Q OKAY. AND WHOSE SIGNATURE IS THAT?

12:02:29 17 A THAT IS MINE.

12:02:30 18 Q OKAY. AND WHAT IS EXHIBIT L?

12:02:32 19 A IT'S A PROMISSORY NOTE FOR \$2 MILLION SUBJECT  
12:02:39 20 TO EXHIBIT A WHICH IS A FINANCIAL STATEMENT THAT  
12:02:42 21 HAD BEEN PROVIDED TO ME.

12:02:44 22 MR. FONG: YOUR HONOR, AT THIS TIME WE  
12:02:46 23 WOULD MOVE TO HAVE EXHIBIT L ADMITTED INTO  
12:02:48 24 EVIDENCE.

12:02:49 25 MS. WONG: OBJECTION, HEARSAY.

12:02:52 1 MR. FONG: IT'S OFFERED FOR COMPLETENESS,  
12:02:54 2 YOUR HONOR. THE BILL OF SALE, THE TWO BILLS OF  
12:02:58 3 SALE, WHICH ARE ADMITTED INTO EVIDENCE, CANNOT BE  
12:03:05 4 SEEN IN ISOLATION OF THIS DOCUMENT BEING SEEN AS  
12:03:08 5 WELL.

12:03:09 6 THE COURT: I'LL SUSTAIN THE OBJECTION.

12:03:10 7 MR. FONG: OKAY.

12:03:11 8 Q NOW, MR. LIGHTER, ON THE PROMISSORY NOTE THAT  
12:03:15 9 IS EXHIBIT L, YOU TESTIFIED THAT YOU DID SIGN IT,  
12:03:20 10 RIGHT?

12:03:20 11 A YES.

12:03:20 12 Q HOW MANY TIMES DOES YOUR SIGNATURE APPEAR?

12:03:23 13 A ONCE.

12:03:23 14 Q OKAY. AND ANY OTHER -- DOES ANYBODY ELSE'S  
12:03:28 15 SIGNATURE APPEAR ON THAT PROMISSORY NOTE?

12:03:30 16 A NO.

12:03:30 17 Q OKAY. NOW, AFTER THIS -- THESE DOCUMENTS WERE  
12:03:47 18 SIGNED ON OR ABOUT OR AROUND THE TIME OF  
12:03:51 19 OCTOBER 8TH, 2004, DID, DID YOU HAVE ANY OTHER  
12:03:55 20 BUSINESS TRANSACTIONS WITH DR. IRWIN GOOTNICK  
12:03:58 21 SUBSEQUENTLY?

12:03:59 22 A WELL, FIRST OF ALL, I RECORDED THE ORIGINALS  
12:04:01 23 OF ALL OF THESE DOCUMENTS.

12:04:03 24 Q OKAY. WHERE DID YOU RECORD THEM?

12:04:05 25 A HAWAII BUREAU OF CONVEYANCES.

12:04:10 1 Q AND AFTER RECORDING THESE DOCUMENTS, WHAT ELSE  
12:04:13 2 DID YOU DO IN TERMS OF YOUR BUSINESS RELATIONSHIP  
12:04:21 3 WITH DR. IRWIN GOOTNICK?

12:04:23 4 A THERE WAS A BILL OF SALE FOR THE STOCK WITH  
12:04:26 5 THE CREDIT BUREAU IN MARCH BUT BEFORE THAT I  
12:04:29 6 LEARNED THAT THE FINANCIAL STATEMENT OF THE  
12:04:31 7 GOOTNICKS HAD GIVEN ME TESTIFIED TO UNDER OATH WAS  
12:04:34 8 FALSE.

12:04:35 9 Q OKAY. AND IN WHAT WAYS WAS IT FALSE FROM YOUR  
12:04:38 10 PERSPECTIVE?

12:04:38 11 A TWO WAYS: ONE, THEY SAID THAT THERE WAS AN  
12:04:42 12 OFFICE BUILDING AT 4333 CALIFORNIA STREET WAS FREE  
12:04:48 13 AND CLEAR AND SECOND INTERNAL AUDIT, THEY SAID THEY  
12:04:51 14 ONLY OWED APPROXIMATELY \$50,000 IN STATE AND  
12:04:54 15 FEDERAL TAX.

12:04:55 16 Q OKAY. AND HOW DID -- WHY DID YOU BELIEVE THAT  
12:04:59 17 THE MEDICAL BUILDING AT 4333 CALIFORNIA STREET WAS  
12:05:05 18 NOT FREE AND CLEAR?

12:05:07 19 A GOOTNICK TOLD ME THAT THEY PUT A MILLION --

12:05:10 20 MS. WONG: OBJECTION, HEARSAY.

12:05:14 21 THE WITNESS: I LEARNED --

12:05:15 22 THE COURT: EXCUSE ME. SUSTAINED. THE  
12:05:16 23 ANSWER IS STRICKEN.

12:05:17 24 BY MR. FONG:

12:05:27 25 Q LET ME SHOW YOU -- DID YOU EVER -- DID THERE



12:05:29 1 COME A TIME WHEN YOU DID A SEARCH ON THE TITLE,  
12:05:36 2 RECORDED TITLE OF 4333 CALIFORNIA STREET MEDICAL  
12:05:40 3 BUILDING IN SAN FRANCISCO?

12:05:42 4 A YES.

12:05:42 5 Q AND WHAT DID YOU DO?

12:05:43 6 A I WENT TO THE SAN FRANCISCO ASSESSOR  
12:05:49 7 RECORDER'S WEB SITE.

12:05:50 8 Q OKAY. AND WHAT DID YOU FIND OUT?

12:05:53 9 MR. FONG: OBJECTION. IT CALLS FOR  
12:05:55 10 HEARSAY.

12:05:58 11 MR. FONG: YOUR HONOR, THIS IS A RECORDED  
12:05:59 12 DOCUMENT.

12:06:03 13 THE COURT: HIS TESTIMONY? I'LL SUSTAIN  
12:06:07 14 THE OBJECTION.

12:06:07 15 BY MR. FONG:

12:06:08 16 Q I'M GOING TO SHOW YOU A DOCUMENT, MR. LIGHTER,  
12:06:10 17 THAT HAS BEEN MARKED AS GOVERNMENT'S EXHIBIT 153.

12:06:15 18 MR. O'REILLY: I'M SORRY, MR. FONG. WHAT  
12:06:18 19 NUMBER?

12:06:21 20 MR. FONG: 153.

12:06:22 21 Q DO YOU SEE THAT DOCUMENT, SIR?

12:06:24 22 A YES, YES.

12:06:25 23 Q AND HOW DID YOU ACQUIRE THAT DOCUMENT?

12:06:31 24 MR. O'REILLY: MR. FONG, IT'S IN  
12:06:34 25 EVIDENCE.

12:06:34 1

MR. FONG: WHAT?

12:06:35 2

MR. O'REILLY: IT'S IN EVIDENCE.

12:06:36 3

MR. FONG: OKAY.

12:06:38 4

THE WITNESS: THIS IS NOT THE MILLION

12:06:41 5

THREE.

12:06:41 6

BY MR. FONG:

12:06:41 7

Q WHAT IS?

12:06:43 8

A IT IS NOT.

12:06:44 9

THE COURT: THE QUESTION IS HOW DID YOU

12:06:45 10

ACQUIRE THIS DOCUMENT?

12:06:50 11

MR. FONG: I APOLOGIZE, YOUR HONOR. I

12:06:52 12

HAVE THE WRONG EXHIBIT.

12:07:01 13

THE COURT: ARE YOU WITHDRAWING THE

12:07:02 14

QUESTION?

12:07:03 15

MR. FONG: YES, YOUR HONOR, I'M

12:07:04 16

WITHDRAWING THE QUESTION BECAUSE THAT'S MY MISTAKE.

12:07:10 17

EXHIBIT 150, WHICH IS NOT IN EVIDENCE.

12:07:17 18

MR. O'REILLY: YOUR HONOR, GOVERNMENT'S

12:07:18 19

EXHIBIT 150, 1-5-0 --

12:07:21 20

MR. FONG: YES.

12:07:22 21

MR. O'REILLY: -- IT IS IN EVIDENCE.

12:07:32 22

THE COURT: LET ME JUST ASK THE JURORS.

12:07:33 23

IT'S NOW FIVE PAST NOON. I'M CONTEMPLATING JUST

12:07:37 24

CONTINUING UNTIL THE BOTTOM OF THE HOUR SOME TIME.

12:07:40 25

DOES THAT PRESENT A PROBLEM? HAS ANYONE MADE

12:07:43 1 APPOINTMENTS BASED ON OUR REPRESENTATION THAT WE  
12:07:46 2 BREAK AT NOON TODAY?

12:07:47 3 I DON'T SEE ANY HANDS. LET'S GO FORWARD.

12:08:04 4 MR. FONG: THANK YOU, YOUR HONOR.

12:08:05 5 Q MR. LIGHTER, DO YOU SEE THE FIRST PAGE OF  
12:08:08 6 EXHIBIT 150?

12:08:09 7 A YES.

12:08:09 8 Q AND DO YOU RECOGNIZE IT?

12:08:10 9 A YES.

12:08:11 10 Q AND WHAT DO YOU -- WHAT IS EXHIBIT 150?

12:08:16 11 A IT'S THE FIRST MORTGAGE ON THE CALIFORNIA  
12:08:30 12 STREET PROPERTY FOR A MILLION THREE.

12:08:32 13 Q ALL RIGHT. NOW, ON THE UPPER RIGHT-HAND  
12:08:35 14 COLUMN THERE'S A STAMP. DO YOU SEE THAT?

12:08:38 15 A YES.

12:08:38 16 Q AND WHAT DOES THAT STAMP SHOW IN TERMS OF THE  
12:08:48 17 ACTIVITY OF THIS PARTICULAR DOCUMENT?

12:08:50 18 MS. WONG: OBJECTION. THE DOCUMENT  
12:08:51 19 SPEAKS FOR ITSELF.

12:08:52 20 THE COURT: IF HE CAN DESCRIBE WHAT IS  
12:08:55 21 PRINTED THERE AND AS WHAT IT SHOWS AND WHAT  
12:08:58 22 HAPPENED, THE DOCUMENT IS --

12:09:00 23 BY MR. FONG:

12:09:01 24 Q BUT AT SOME POINT YOU SAW THIS DOCUMENT,  
12:09:05 25 RIGHT?

12:09:05 1 A I RECORDED THE COPY.

12:09:06 2 Q OKAY. AND YOU BECAME AWARE THAT THIS WAS  
12:09:14 3 RECORDED WITH THE SAN FRANCISCO RECORDER'S OFFICE?

12:09:19 4 A YES.

12:09:19 5 Q AND WHEN WAS IT RECORDED?

12:09:20 6 A JUNE 15TH, 2004.

12:09:22 7 Q AND THAT WOULD HAVE BEEN ABOUT FOUR MONTHS  
12:09:25 8 BEFORE THE BILL OF SALE BY WHICH THE GCTI ASSETS  
12:09:29 9 WERE TRANSFERRED TO YOU?

12:09:30 10 A YES.

12:09:30 11 Q OKAY. NOW, THE MORTGAGES FROM THE GOOTNICK  
12:09:45 12 FAMILY TRUST TO THE MORTGAGOR TO J AND J TRUST  
12:09:52 13 WHICH IS THE MORTGAGEE, DO YOU SEE THAT?

12:09:54 14 A YES.

12:09:55 15 Q AND BEFORE OCTOBER 8TH, 2004, WHEN THE BILL OF  
12:09:59 16 SALE WAS PREPARED AND SIGNED, HAD YOU KNOWN ABOUT  
12:10:03 17 THIS PARTICULAR MORTGAGE THAT IS GOVERNMENT'S  
12:10:06 18 EXHIBIT 150?

12:10:07 19 A NO, NOT POSSIBLE, NO.

12:10:17 20 Q AND WHAT IS THE EFFECT WHEN YOU FOUND OUT THIS  
12:10:21 21 DOCUMENT WAS RECORDED WITH THE SAN FRANCISCO  
12:10:24 22 RECORDER, IN YOUR MIND WHAT WAS THE EFFECT OF THAT?

12:10:27 23 A WELL, I SIGNED A \$2 MILLION NOTE BASED ON THE  
12:10:30 24 CALIFORNIA PROPERTY BE FREE AND CLEAR AND SO I PAID  
12:10:35 25 GOOTNICK BY NOTE A MILLION THREE MORE THAN THAT

NOTE WAS WORTH. I OVERPAID BY A MILLION THREE.

Q AND THAT'S BECAUSE YOU DID NOT KNOW THAT THIS MORTGAGE HAD BEEN RECORDED BACK IN JUNE OF 2004?

A CORRECT.

MS. WONG: OBJECTION, ASKED AND ANSWERED.

THE COURT: I'LL SUSTAIN THE OBJECTION.

THE ANSWER IS STRICKEN.

BY MR. FONG:

Q NOW, DID YOU HAVE ANY ROLE IN THE PREPARATION OF THIS MORTGAGE THAT IS GOVERNMENT'S EXHIBIT 150?

A NO.

Q AND DID YOU HAVE ANY KNOWLEDGE THAT IT WAS RECORDED IN JUNE OF 2004?

A NO.

Q AND DID YOU HAVE ANY KNOWLEDGE THAT IT WAS PREPARED BY ANYBODY?

A I LEARNED LATER, BUT NO.

Q AND -- BUT AS OF OCTOBER 8TH, 2004, WHEN YOU SIGNED THE BILL OF SALE, DID YOU KNOW IF ANYBODY HAD PREPARED THIS MORTGAGE?

MS. WONG: OBJECTION, ASKED AND ANSWERED.

THE COURT: IT HAS BEEN. YOU CAN JUST ANSWER QUICKLY, SIR.

THE WITNESS: NO.

THE COURT: YOU CAN ASK THE NEXT

12:11:44 1 QUESTION.

12:11:44 2 BY MR. FONG:

12:11:45 3 Q DID YOU HAVE A DISCUSSION WITH DR. GOOTNICK  
12:11:46 4 REGARDING THIS MORTGAGE AFTER YOU HAD FOUND OUT  
12:11:48 5 ABOUT IT?

12:11:48 6 A YES.

12:11:49 7 Q OKAY. AND WHAT DID YOU SAY TO DR. GOOTNICK?

12:11:52 8 MS. WONG: OBJECTION, HEARSAY.

12:11:53 9 THE COURT: SUSTAINED.

12:11:55 10 BY MR. FONG:

12:11:56 11 Q ALL RIGHT. DID YOU -- OKAY. YOU HAD A  
12:12:00 12 DISCUSSION WITH DR. GOOTNICK ABOUT THIS MORTGAGE,  
12:12:03 13 RIGHT?

12:12:03 14 A YES.

12:12:03 15 Q OKAY. WHAT DID YOU DO, IF ANYTHING, AFTER  
12:12:06 16 YOUR DISCUSSION WITH DR. GOOTNICK?

12:12:07 17 A I RECORDED ADDITIONAL MORTGAGES ON THE  
12:12:17 18 PROPERTY.

12:12:17 19 Q OKAY. NOW, LET ME MAKE SURE I HAVE THE TIMING  
12:12:19 20 OF THIS DOWN RIGHT.

12:12:20 21 WHEN DID YOU HAVE THIS CONVERSATION WITH  
12:12:23 22 DR. GOOTNICK ABOUT EXHIBIT 150?

12:12:26 23 A A FEW DAYS AFTER OCTOBER 8TH.

12:12:30 24 Q SO IT WAS AFTER THE BILL OF SALE HAD ALREADY  
12:12:33 25 BEEN SIGNED?

12:12:34 1

A YES.

12:12:35 2

Q NOW, ARE YOU --

12:12:43 3

A ACTUALLY, HE TOLD ME ABOUT IT BUT I DON'T

12:12:47 4

BELIEVE I HAD A DISCUSSION.

12:12:47 5

Q OKAY. BUT YOU FOUND OUT ABOUT THIS AFTER THE

12:12:55 6

PROMISSORY NOTE AND THE BILL OF SALE HAD ALREADY

12:12:57 7

BEEN SIGNED?

12:12:57 8

A THAT'S TRUE.

12:12:58 9

Q OKAY. NOW, YOU SAID YOU TOOK SOME ACTION

12:13:03 10

AFTER YOU LEARNED ABOUT THIS MORTGAGE, RIGHT?

12:13:08 11

A YES.

12:13:08 12

Q AND WHAT DID YOU DO?

12:13:09 13

MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:13:10 14

THE COURT: THE PREVIOUS QUESTION YOU HAD

12:13:14 15

ASKED AND ANSWERED IT, BUT THIS ONE YOU CAN ANSWER,

12:13:16 16

SIR. WHAT DID YOU DO?

12:13:17 17

THE WITNESS: THANK YOU. I RECORDED TWO

12:13:21 18

MORTGAGES OF VARIOUS AMOUNTS.

12:13:22 19

BY MR. FONG:

12:13:22 20

Q OKAY. NOW, WHEN YOU SAY YOU RECORDED TWO

12:13:27 21

MORTGAGES OF VARIOUS AMOUNTS, WHAT DO YOU MEAN BY

12:13:30 22

THAT?

12:13:30 23

A TWO CORPORATIONS FILED MORTGAGES, RECORDED

12:13:34 24

MORTGAGES ON THE SAME PROPERTY.

12:13:36 25

Q OKAY. NOW, AT THIS TIME WHEN YOU WERE DOING

12:13:38 1 THIS, DID YOU CONSIDER YOURSELF THE OWNER OF ASSETS  
12:13:45 2 OF GCTI?

12:13:46 3 A YES.

12:13:46 4 Q AND WOULD THAT INCLUDE THE 4333 CALIFORNIA  
12:13:50 5 STREET MEDICAL BUILDING?

12:13:51 6 A THROUGH THE STRUCTURE OF THE GCTI, YES.

12:13:54 7 Q OKAY. NOW, YOU RECORDED TWO MORTGAGES. DID  
12:14:02 8 YOU RECORD THEM AT THE SAME TIME?

12:14:03 9 A NO.

12:14:03 10 Q AND TELL US ABOUT THE FIRST MORTGAGE THAT YOU  
12:14:05 11 RECORDED IN RESPONSE TO LEARNING ABOUT THE  
12:14:07 12 EXISTENCE OF EXHIBIT 150?

12:14:09 13 A I THINK THE FIRST TIME I RECORDED THE  
12:14:13 14 MORTGAGES WAS AFTER THE SECURITIES OFFERING WAS  
12:14:21 15 FILED.

12:14:22 16 Q AND WHEN WAS THAT?

12:14:23 17 A WITH THE S.E.C. NOVEMBER 1ST.

12:14:26 18 Q AND WHAT YEAR?

12:14:27 19 A 2004.

12:14:28 20 Q OKAY. SO YOU SAID YOU RECORDED THE FIRST  
12:14:35 21 MORTGAGE AFTER THAT?

12:14:35 22 A I BELIEVE SO.

12:14:37 23 Q AND WHAT WAS THE PURPOSE IN RECORDING THIS  
12:14:39 24 MORTGAGE?

12:14:40 25 A I HAD TO GIVE UP OR ABANDON THE SECURITIES



12:14:51 1 OFFERING OR CORRECT -- OR AMEND IT WITH CONSISTENT  
12:14:55 2 FACTS SO. SO ONE OF THE FEATURES OF THE FIRST  
12:15:03 3 DEBENTURE OFFERING WAS THE FREE AND CLEAR OFFICE  
12:15:07 4 BUILDING.

12:15:07 5 Q OKAY. SO WHEN YOU FILED YOUR DEBENTURE  
12:15:11 6 OFFERING, WHICH IS THE SECURITY OFFERING, RIGHT?

12:15:13 7 A YES.

12:15:13 8 Q AND YOU PUT IN THERE THE FACT THAT THE MEDICAL  
12:15:16 9 BUILDING WAS PART OF THE OFFERING?

12:15:18 10 A YES, THAT'S A FREE AND CLEAR PROPERTY.

12:15:23 11 Q AND DID YOU SIGN A VALUE TO THE OFFICE  
12:15:26 12 BUILDING IN YOUR SECURITY OFFERING?

12:15:28 13 A 1.5 MILLION.

12:15:29 14 Q BUT WITH NO LIEN OR ENCUMBRANCES?

12:15:35 15 A CORRECT.

12:15:35 16 Q OKAY. THE FIRST LIEN OR MORTGAGE YOU FILED IN  
12:15:55 17 RESPONSE TO LEARNING ABOUT EXHIBIT 150, HOW MUCH  
12:15:58 18 WAS THAT FOR?

12:16:00 19 A 350,000.

12:16:03 20 Q NOW, WAS THAT -- WAS THERE ACTUALLY A LOAN FOR  
12:16:15 21 \$350,000 THAT THE MORTGAGE WAS ACTUALLY SECURING?

12:16:18 22 A IT WAS AN ADDITIONAL MORTGAGE WITHOUT CHANGING  
12:16:20 23 THE NOTE, IN OTHER WORDS, YOU CAN HAVE THREE OR  
12:16:26 24 FOUR MORTGAGES ON ONE PROPERTY BUT IT CONTROLS THE  
12:16:30 25 TRANSACTIONS IS THE NOTE. THE DEVELOPERS USE THIS

12:16:34 1 ALL OF THE TIME WITH SUBDIVISIONS AND IT'S CALLED A  
12:16:37 2 BLANKET MORTGAGE.

12:16:38 3 Q AND WHAT WAS THE NOTE THAT YOU WERE  
12:16:40 4 REFERENCING WHEN YOU RECORDED THE \$350,000 MORTGAGE  
12:16:49 5 THAT YOU JUST TALKED ABOUT?

12:16:57 6 A WHAT I WAS DOING IS PREVENTING DR. GOOTNICK  
12:17:01 7 FROM INCREASING ANOTHER MORTGAGE BECAUSE THERE WAS  
12:17:04 8 STILL EQUITY LEFT BETWEEN THE MILLION THREE AND THE  
12:17:09 9 MILLION FIVE.

12:17:09 10 Q AND YOU RECORDED THE MORTGAGE FOR \$350,000 TO  
12:17:14 11 PROTECT WHAT?

12:17:15 12 A TO PROTECT THE REMAINING EQUITY.

12:17:17 13 Q OKAY. I WANT TO PUBLISH -- EXCUSE ME. THIS  
12:17:36 14 IS GOVERNMENT'S EXHIBIT 152 THAT HAS BEEN ADMITTED  
12:17:38 15 INTO EVIDENCE.

12:17:38 16 IS THIS THE MORTGAGE THAT YOU HAVE BEEN  
12:17:40 17 TESTIFYING ABOUT JUST NOW?

12:17:42 18 A COULD YOU SCROLL IT DOWN?

12:17:45 19 YES.

12:17:55 20 Q AND WHAT DID YOU DO AFTER YOU RECORDED THAT?  
12:18:00 21 WELL, FIRST OF ALL, WHEN DID YOU RECORD THE  
12:18:02 22 MORTGAGE?

12:18:02 23 A SAN FRANCISCO COUNTY ASSESSOR RECORDER.

12:18:07 24 Q AND YOU RECORDED THAT ON OR ABOUT FRIDAY,  
12:18:11 25 NOVEMBER 5TH, 2004?

12:18:12 1 A YES.

12:18:12 2 Q OKAY. AND WHAT DID YOU DO NEXT IN TERMS OF  
12:18:18 3 YOUR RELATIONSHIP WITH DR. GOOTNICK AFTER YOU  
12:18:23 4 RECORDED THIS MORTGAGE?

12:18:24 5 A WELL, RATHER THAN GET UPSET OR SUE HIM OR  
12:18:30 6 TERMINATE THE DEBENTURE RECOVERING, THE SECURITIES  
12:18:35 7 OFFERING, I DECIDED TO HAVE A LITTLE ALOHA SPIRIT  
12:18:40 8 AND TRY TO NEGOTIATE A SETTLEMENT WITH HIM.

12:18:43 9 Q OKAY. NOW, THE DEBENTURE OFFERING OR  
12:18:50 10 SECURITIES OFFERING WAS STILL ONGOING; IS THAT  
12:18:52 11 RIGHT?

12:18:52 12 A ABSOLUTELY.

12:18:53 13 Q NOW, IN LIGHT OF THE INFORMATION THAT YOU  
12:18:54 14 FOUND OUT ABOUT THE EXISTENCE OF THE \$1.3 MILLION  
12:19:00 15 MORTGAGE THAT HAD BEEN PLACED BY DR. GOOTNICK ON  
12:19:02 16 THE PROPERTY BACK IN JUNE OF 2004, DID YOU DO  
12:19:09 17 ANYTHING INsofar AS YOUR SECURITIES OFFERING  
12:19:11 18 FILING?

12:19:11 19 A ON OCTOBER 16TH, I AMENDED THE SECURITIES  
12:19:16 20 OFFERING AND LISTED THE OFFICE BUILDING AS HAVING A  
12:19:21 21 VALUE OF 1.5 MILLION AND A DEBT OF 1.5 MILLION.

12:19:25 22 Q BUT YOU SAID YOU AMENDED THIS ON WHAT DATE?

12:19:28 23 A NOVEMBER 16TH.

12:19:29 24 Q OKAY. I THOUGHT I HEARD YOU SAY OCTOBER 16TH?

12:19:32 25 A NO.

12:19:33 1 Q OKAY. WELL, OKAY.

12:19:35 2 NOW, AND THE ORIGINAL OFFERING WAS  
12:19:38 3 NOVEMBER 1ST, RIGHT?

12:19:39 4 A CORRECT.

12:19:39 5 Q OKAY. SO ABOUT 16 DAYS LATER YOU MADE THE  
12:19:43 6 AMENDMENT?

12:19:44 7 A YES.

12:19:44 8 Q OKAY. AND IN THE AMENDMENT YOU NOTED THAT  
12:19:48 9 THERE IS ACTUALLY, THE 4333 CALIFORNIA MEDICAL  
12:19:53 10 STREET BUILDING WAS NOT FREE AND CLEAR?

12:19:55 11 A CORRECT.

12:19:56 12 MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:19:57 13 THE COURT: SUSTAINED.

12:20:04 14 BY MR. FONG:

12:20:05 15 Q NOW, AFTER YOU DID THAT, WHAT DID YOU DO NEXT  
12:20:08 16 IN TERMS OF YOUR BUSINESS DEALINGS WITH  
12:20:10 17 DR. GOOTNICK?

12:20:10 18 A WELL, GOOTNICK RENEGED ON THE DEAL. HE  
12:20:18 19 BREACHED HIS CONTRACT WITH ME.

12:20:19 20 Q HOW?

12:20:19 21 A HE SAID I WANTED COLLATERAL, IN OTHER WORDS, I  
12:20:26 22 HAD PERSONALLY OWED THE \$2 MILLION BASED ON MY  
12:20:35 23 ORIGINAL SIGNATURES AND WHATEVER MESSAGES I ORALLY  
12:20:38 24 PROMISED HIM. AND HE WANTED DIRECT COLLATERAL.

12:20:41 25 Q OKAY.

12:20:43 1 A OR CONFIRMATION OF THE PLEDGES.

12:20:49 2 Q SO HE WAS ASKING FOR SECURITY FOR THE  
12:20:52 3 PROMISSORY NOTE?

12:20:52 4 A OR WRITTEN PLEDGES.

12:20:54 5 Q AND WHAT IS A PLEDGE?

12:20:55 6 A A PLEDGE IS A PROMISE TO -- IT'S LIKE A  
12:21:01 7 GUARANTEE OF PROPERTY.

12:21:01 8 Q OKAY. SO DR. GOOTNICK WANTED SOME SECURITY OR  
12:21:06 9 PLEDGES TO SECURE THE PROMISSORY NOTE?

12:21:11 10 MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:21:12 11 THE COURT: SUSTAINED.

12:21:13 12 BY MR. FONG:

12:21:14 13 Q SO WHAT DID YOU DO IN RESPONSE TO THAT?

12:21:15 14 A I STARTED COMPILING PLEDGES AND SECURITIES FOR  
12:21:29 15 DR. GOOTNICK AND WHAT HE WANTED.

12:21:32 16 Q OKAY.

12:21:33 17 A AND THEN I HAD HIM MEET MY WIFE AND  
12:21:39 18 MOTHER-IN-LAW WHO CONTROLLED MOST OF THE ASSETS,  
12:21:44 19 INCLUDING 500,000 CASH THAT WAS PLEDGED TO HIM.

12:21:49 20 Q ALL RIGHT. AND WHERE DID THIS MEETING TAKE  
12:21:51 21 PLACE BETWEEN YOU AND YOUR WIFE AND YOUR  
12:21:54 22 MOTHER-IN-LAW ON THE ONE HAND AND DR. GOOTNICK ON  
12:21:58 23 THE OTHER HAND?

12:21:58 24 A IN HAWAII AT THE KONA RESORT I BELIEVE HE HAD  
12:22:02 25 A TIME SHARE IN.

12:22:03 1  
12:22:04 2  
12:22:06 3  
12:22:13 4  
12:22:14 5  
12:22:15 6  
12:22:16 7  
12:22:17 8  
12:22:24 9  
12:22:27 10  
12:22:30 11  
12:22:32 12  
12:22:37 13  
12:22:40 14  
12:22:41 15  
12:22:43 16  
12:22:45 17  
12:22:48 18  
12:22:52 19  
12:22:56 20  
12:22:56 21  
12:22:56 22  
12:23:02 23  
12:23:05 24  
12:23:11 25

Q AND WHEN WAS THAT?

A DECEMBER 24TH, 2004.

Q OKAY. NOW, JUST BEFORE THAT YOU HAD MET  
DR. GOOTNICK IN SAN FRANCISCO, RIGHT?

A DECEMBER 17TH.

Q SO IT WAS ABOUT A WEEK LATER?

A YES.

Q OKAY. NOW, DID YOU -- AT SOME POINT  
DR. GOOTNICK TRANSFERRED A WIRE TRANSFER MONEY TO  
YOU, MONEY FROM HIS ACCOUNT INTO EITHER YOUR  
ACCOUNT OR HCHC'S ACCOUNT; IS THAT CORRECT?

A OR HONOLULU INN.

Q HONOLULU INN. IS THAT A COMPANY THAT YOU  
CONTROLLED?

A AN OFFICER AND A DIRECTOR, YES.

Q AND, NOW, YOU HEARD TESTIMONY WHEN  
DR. GOOTNICK WAS ON THE STAND ABOUT THE TRANSFER OF  
A LOT OF LIQUID ASSETS FROM HIM TO ACCOUNTS THAT  
YOU ASKED HIM TO TRANSFER THE LIQUID ASSETS INTO;  
IS THAT CORRECT?

A YES.

Q OKAY. AND WHAT WAS YOUR UNDERSTANDING AS TO  
WHY THESE LIQUID ASSETS WERE BEING TRANSFERRED?

A BECAUSE AS PART OF THE TRANSACTION I HAD  
BOUGHT THE ASSETS AND I WANTED TO PUT THEM PLACES

12:23:15 1 WHERE I COULD REPRESENT IN A SECURITIES OFFERING  
12:23:17 2 THAT WERE AVAILABLE TO REPRESENT AS BEING PART OF  
12:23:23 3 THE SECURITIES OFFERING OR MORE IMPORTANTLY IF THE  
12:23:26 4 S.E.C. QUESTIONED ME, I COULD PROVE THE ASSETS  
12:23:32 5 REPRESENTING THE SECURITIES OFFERING.

12:23:34 6 Q OKAY. SO -- SO, NOW, WHAT DID YOU UNDERSTAND  
12:23:38 7 THESE LIQUID ASSETS, THE LARGE SUMS OF MONEY THAT  
12:23:42 8 DR. GOOTNICK HAD TRANSFERRED TO YOU, WHAT -- WHOSE  
12:23:45 9 PROPERTY WERE THEY AT THE TIME THAT HE MADE THE  
12:23:47 10 TRANSFER?

12:23:47 11 A THEY WERE MINE.

12:23:48 12 Q WHAT?

12:23:49 13 A THEY WERE MY PROPERTY.

12:23:50 14 Q BUT IN TERMS OF -- BEFORE THAT, WHOSE PROPERTY  
12:23:54 15 WERE THEY?

12:23:54 16 A GCTI.

12:23:56 17 Q SO GCTI. SO YOUR UNDERSTANDING WAS THAT GCTI  
12:24:00 18 LIQUID ASSETS WERE BEING TRANSFERRED TO YOUR  
12:24:03 19 CONTROL?

12:24:05 20 MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:24:06 21 THE COURT: SUSTAINED.

12:24:09 22 BY MR. FONG:

12:24:10 23 Q OKAY. AFTER YOU RECEIVED THE TRANSFER OF THE  
12:24:14 24 LIQUID ASSETS FROM DR. GOOTNICK, WHAT DID YOU DO  
12:24:17 25 WITH THAT, WITH THE -- WELL, FIRST OF ALL, DO YOU

12:24:20 1 REMEMBER APPROXIMATELY HOW MUCH IN LIQUID ASSETS  
12:24:22 2 YOU RECEIVED AS A RESULT OF THE AGREEMENT BETWEEN  
12:24:25 3 YOU AND DR. GOOTNICK?

12:24:26 4 A OVER 450,000.

12:24:29 5 Q DOLLARS?

12:24:30 6 A DOLLARS?

12:24:31 7 Q AND WHAT DID YOU DO WITH THAT MONEY?

12:24:37 8 A MOSTLY IT WENT TO ATTORNEY'S FEES BECAUSE I  
12:24:40 9 MERGED THE BUSINESSES AND THE HAWAII BUSINESS WITH  
12:24:43 10 THE CALIFORNIA BUSINESS.

12:24:44 11 A LOT OF IT WENT TO TAXES, STATE TAXES.

12:24:57 12 Q NOW, AT ANY POINT DID YOU, AFTER, AFTER THE  
12:25:02 13 BILL OF SALE TRANSFERRING THE ASSETS TO GCTI FROM  
12:25:09 14 DR. GOOTNICK TO YOU, AFTER THAT TRANSACTION, DID  
12:25:11 15 YOU EVER MAKE ANY REPRESENTATIONS TO DR. GOOTNICK  
12:25:14 16 AS TO ASSETS THAT YOU MIGHT CONTROL OR OWN?

12:25:17 17 A THERE WAS A PARTIAL LIST ON ONE E-MAIL THAT  
12:25:26 18 DOESN'T SHOW THE REST OF THE E-MAIL, THE REPLY  
12:25:29 19 E-MAIL, BUT YES.

12:25:30 20 Q AND WAS THAT E-MAIL PART OF THE E-MAILS THAT  
12:25:38 21 WE HAD SEEN COLLECTED AS GOVERNMENT'S EXHIBIT 2?

12:25:41 22 A YES.

12:26:41 23 MR. FONG: EXCUSE ME, YOUR HONOR. I  
12:26:42 24 APOLOGIZE. I THOUGHT I HAD IT, BUT I DO NOT.

12:26:46 25 Q EXCUSE ME. MR. LIGHTER, I'M GOING TO PUBLISH



12:26:49 1 WHAT HAS BEEN ADMITTED INTO EVIDENCE AS  
12:26:51 2 GOVERNMENT'S EXHIBIT 2 AND SPECIFICALLY PAGE 9.  
12:26:54 3 FIRST OF ALL, SIR, DO YOU SEE THAT  
12:26:56 4 ONE-PAGE DOCUMENT? YEAH, THAT ONE PAGE, EXHIBIT 2,  
12:27:00 5 PAGE 9?  
12:27:04 6 A YES.  
12:27:04 7 Q NOW, THERE ARE SOME PASSAGES OF THIS E-MAIL  
12:27:08 8 WITH ARROWS POINTING TO THE RIGHT.  
12:27:10 9 DO YOU SEE THAT?  
12:27:11 10 A YES.  
12:27:11 11 Q OKAY. AND IS -- ARE THOSE YOUR WRITINGS?  
12:27:15 12 A I -- YOU KNOW, THIS E-MAIL IS ENDING OR IS  
12:27:24 13 INCOMPLETE AND THERE'S REPLY PARTS THAT IS A  
12:27:29 14 SUPPLEMENT TO THIS, BUT IT LOOKS LIKE MY WRITING.  
12:27:32 15 Q OKAY. NOW, DIRECTING YOUR ATTENTION TO THIS  
12:27:36 16 PARAGRAPHS THAT SAYS, "AS FAR AS MY PERSONAL  
12:27:39 17 SITUATION, APPARENTLY BASED ON NEW SALES FIGURES,  
12:27:42 18 THE FOUR VOLCANO PROPERTIES HAVE A COMBINED VALUE  
12:27:46 19 OF ABOUT \$1.8 MILLION WITH MORTGAGES OF \$270,000."  
12:27:51 20 DO YOU SEE THAT?  
12:27:52 21 A YES.  
12:27:52 22 Q OKAY. WHAT -- FIRST OF ALL, IS THAT A  
12:27:56 23 STATEMENT THAT YOU PREPARED?  
12:27:57 24 A PROBABLY.  
12:28:01 25 Q OKAY. NOW, WHEN YOU SAY THE WORDS OR THE

12:28:04 1 NAMES THE FOUR VOLCANO PROPERTIES, WHAT DOES THAT  
12:28:08 2 REFER TO?

12:28:09 3 A ACTUALLY IT'S A MISSTATEMENT. AT THE TIME  
12:28:16 4 THERE WERE FIVE VOLCANO PROPERTIES. THERE WERE  
12:28:19 5 FIVE VOLCANO PROPERTIES.

12:28:21 6 Q REGARDLESS IF THERE WERE FOUR OR FIVE, WHAT  
12:28:26 7 DOES THE FOUR VOLCANO PROPERTIES REFER TO?

12:28:28 8 A TWO BED AND BREAKFASTS AND TWO VACANT LOTS.

12:28:31 9 Q AND TWO BED AND BREAKFASTS WHERE?

12:28:35 10 A VOLCANO, HAWAII, NEXT TO VOLCANO'S NATIONAL  
12:28:39 11 PARK.

12:28:39 12 Q AND THAT'S ON THE BIG ISLAND OF HAWAII?

12:28:41 13 A THE BIG ISLAND OF HAWAII, YES.

12:28:43 14 Q OKAY. AND AT THE TIME OF AROUND OCTOBER 16TH,  
12:28:48 15 2004, DID YOU HAVE AN UNDERSTANDING OR BELIEF AS TO  
12:28:54 16 THE VALUE OF THE -- LET'S JUST BREAK IT DOWN. THE  
12:28:59 17 TWO BED AND BREAKFASTS, ARE THEY TWO SEPARATE  
12:29:03 18 BUILDINGS?

12:29:04 19 A TWO SEPARATE PROPERTIES.

12:29:05 20 Q OKAY. AND THEN IS ONE LARGER THAN THE OTHER?

12:29:14 21 MS. WONG: OBJECTION, RELEVANCE.

12:29:15 22 THE COURT: SUSTAINED. YOU CAN ASK  
12:29:16 23 ANOTHER QUESTION.

12:29:17 24 BY MR. FONG:

12:29:19 25 Q THE TWO BED AND BREAKFASTS, DO YOU KNOW -- DID

12:29:23 1 YOU KNOW IN OCTOBER OF 2004 HOW MUCH EACH WAS  
12:29:27 2 WORTH?

12:29:28 3 A ABOUT A MILLION DOLLARS.

12:29:29 4 Q EACH?

12:29:30 5 A EACH.

12:29:30 6 Q OKAY. AND AT THAT TIME -- WHAT ABOUT THE  
12:29:35 7 VACANT LOTS. YOU SAID THERE WERE THREE VACANT  
12:29:40 8 LOTS, TOO?

12:29:42 9 A YES.

12:29:42 10 Q AND HOW MUCH WERE THEY WORTH?

12:29:44 11 A FROM 300,000 TO 400,000.

12:29:47 12 THE COURT: IS THAT EACH OR COLLECTIVELY?

12:29:49 13 THE WITNESS: COLLECTIVELY. SORRY.

12:29:50 14 BY MR. FONG:

12:29:51 15 Q SO THE TWO BED AND BREAKFAST BUILDINGS WERE  
12:29:54 16 WORTH ABOUT YOU SAID A MILLION DOLLARS EACH AND THE  
12:29:57 17 THREE LOTS WERE ABOUT \$300,000 OR \$400,000 TOTAL?

12:30:01 18 MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:30:02 19 THE COURT: SUSTAINED.

12:30:08 20 BY MR. FONG:

12:30:08 21 Q SO THE TOTAL VALUE WAS ABOUT \$2,300,000 OR  
12:30:14 22 \$2,400,000?

12:30:14 23 A PROBABLY CLOSE TO 2.5 BUT THAT SOUNDS FAIR.

12:30:16 24 Q OKAY. AND WHAT KIND OF LIENS OR MORTGAGES OR  
12:30:23 25 ENCUMBRANCES WERE ASSOCIATED WITH ANY OF THE

12:30:25 1 VOLCANO PROPERTIES AT THE TIME?

12:30:27 2 A AT THE TIME 270,000.

12:30:30 3 Q NOW, WHY DID YOU SAY THAT THE VOLCANO

12:30:32 4 PROPERTIES HAVE A COMBINED VALUE OF ONLY

12:30:35 5 \$1.8 MILLION WHEN YOU JUST TESTIFIED THAT YOUR

12:30:38 6 BELIEF ACTUALLY WAS THAT THEY HAD COMBINED VALUE OF

12:30:44 7 CLOSER TO \$2.3, \$2.4, \$2.5 MILLION?

12:30:49 8 A WHEN YOU SPEAK OF REAL ESTATE VALUES ANYWHERE,

12:30:56 9 IT'S WISER, IN MY OPINION, TO BE CONSERVATIVE.

12:31:00 10 Q OKAY. BESIDES THIS E-MAIL, DID YOU AFTER THE

12:31:11 11 SIGNING OF THE BILLS OF SALE AND THE PROMISSORY

12:31:15 12 NOTE ON OR ABOUT OCTOBER 8TH, 2004, DID YOU MAKE

12:31:22 13 ANY OTHER REPRESENTATIONS TO DR. GOOTNICK AS TO THE

12:31:27 14 VALUE OF ANY ASSETS THAT YOU OWNED OR THAT YOU HAD

12:31:30 15 CONTROL OF?

12:31:30 16 A YES, I JUST TOLD HIM THE OREGON RANCH WAS

12:31:39 17 PURCHASED FOR \$350,000 AND IT'S PROBABLY WORTH

12:31:43 18 \$350,000.

12:31:44 19 AS A MATTER OF FACT SHORTLY THEREAFTER I

12:31:48 20 GOT AN APPRAISAL OF 380,000.

12:31:51 21 Q \$380,000?

12:31:54 22 A \$380,000.

12:32:01 23 Q OKAY. ANYTHING ELSE?

12:32:19 24 A COULD YOU PUT THIS ON?

12:32:19 25 Q SURE?

12:32:22 1 A AND THIS INCLUDES THE MAKIKI PROPERTY.

12:32:25 2 Q AND WHAT IS THE MAKIKI PROPERTY?

12:32:26 3 A IT'S AN APARTMENT TYPE RENTAL BUILDING.

12:32:30 4 Q AND IT'S NOT THE SPENCER STREET PROPERTY WHERE  
12:32:35 5 YOU'RE CURRENTLY SPLITTING YOUR TIME IN TERMS OF  
12:32:37 6 WHERE YOU'RE LIVING?

12:32:39 7 A YES.

12:32:39 8 Q AND THAT HAS AN EQUITY OF ABOUT \$30,000?

12:32:45 9 A YES. THIS DOESN'T INCLUDE THE DEVELOPMENT  
12:32:48 10 AGREEMENT THAT I OWNED AT THAT TIME.

12:32:51 11 Q IT'S NOT THE ROYAL PATENT DEVELOPMENT  
12:32:55 12 PROPERTIES?

12:32:56 13 A YES.

12:32:56 14 Q AND I WANT TO DIRECT YOUR ATTENTION TO THE  
12:32:58 15 FOUR VOLCANO PROPERTIES, OKAY?

12:33:00 16 NOW, WHO OWNED THOSE VOLCANO PROPERTIES  
12:33:03 17 BE IT FOUR OR FIVE DIFFERENT PIECES OF THEM? WHO  
12:33:07 18 ACTUALLY OWNED THEM AT THE TIME IN MID-OCTOBER OF  
12:33:10 19 2004?

12:33:11 20 A MY WIFE OR HER CORPORATIONS.

12:33:15 21 Q OKAY. DID YOU HAVE ANY OWNERSHIP INTEREST IN  
12:33:17 22 THE VOLCANO PROPERTIES AT THE TIME?

12:33:19 23 A I WAS THINKING ABOUT THAT. ONE OF THE BED AND  
12:33:36 24 BREAKFASTS AND I HAD A REVERSIONARY BUT OTHER THAN  
12:33:40 25 THAT, NO.

12:33:40 1 Q OKAY. THEN WHY DID YOU MAKE THE  
12:33:42 2 REPRESENTATION THAT THE FOUR VOLCANO PROPERTIES  
12:33:45 3 HAVE A COMBINED VALUE OF \$1.8 MILLION?

12:33:49 4 A I DIDN'T SPECIFICALLY SAY THAT I OWNED THEM.

12:33:53 5 Q WELL, LET ME ASK YOU, WHEN YOU MADE THIS  
12:34:00 6 REPRESENTATION ON OR ABOUT OCTOBER 16TH, 2004, DID  
12:34:04 7 YOU BELIEVE THAT YOU HAD, THAT YOU HAD ACCESS TO  
12:34:08 8 USE THOSE PROPERTIES, THE VOLCANO PROPERTIES AS  
12:34:11 9 PLEDGES FOR YOUR TRANSACTIONS WITH DR. GOOTNICK?

12:34:14 10 A ABSOLUTELY.

12:34:15 11 Q OKAY. AND HOW DID YOU COME TO THAT BELIEF?

12:34:22 12 A CORPORATE MINUTES AND CONTRACTS.

12:34:25 13 Q AND DID YOU -- AT THE TIME DID YOU KNOW  
12:34:34 14 WHETHER OR NOT YOUR WIFE WOULD AGREE TO PUT THOSE  
12:34:38 15 PROPERTIES UP FOR PLEDGES FOR DR. GOOTNICK'S  
12:34:41 16 TRANSACTIONS?

12:34:41 17 A YES. AND, FURTHERMORE, SHE TOLD HIM HERSELF  
12:34:44 18 PERSONALLY --

12:34:47 19 MS. WONG: OBJECTION.

12:34:48 20 THE COURT: SUSTAINED. STRICKEN.

12:34:51 21 BY MR. FONG:

12:34:52 22 Q BUT YOU KNEW THAT YOUR WIFE WOULD AGREE TO PUT  
12:34:54 23 THE PROPERTIES ON AS PLEDGES?

12:34:55 24 A HAD AGREED.

12:34:56 25 Q OKAY. AFTER DR. GOOTNICK HAD TRANSFERRED THE

12:35:13 1 LIQUID ASSETS OF GCTI TO YOU OR TO AN ENTITY THAT  
12:35:18 2 YOU FORMED, WHAT HAPPENED NEXT -- DID YOU HAVE ANY  
12:35:25 3 MORE BUSINESS TRANSACTIONS WITH DR. GOOTNICK?

12:35:26 4 A TWO MORE.

12:35:28 5 Q OKAY. TELL US ABOUT THE FIRST ONE AFTER THE  
12:35:32 6 TRANSFER OF THE LIQUID ASSETS?

12:35:34 7 A TO REFORM THE ADDITIONAL MORTGAGE TO THE  
12:35:43 8 DEBENTURE OFFERING, THE SECURITIES OFFERING, I  
12:35:46 9 INCREASED ITS VALUE TO A MILLION FIVE, 350 TO A  
12:35:51 10 MILLION FIVE AND BECAUSE THAT'S WHAT THE DEBENTURE  
12:35:54 11 OFFERING SAID.

12:35:54 12 Q OKAY.

12:35:55 13 A TO MAKE SURE THAT I PUT A SECOND MILLION FIVE  
12:36:01 14 ON I THINK IT WAS OVERKILL. THERE WAS ONLY ONE  
12:36:04 15 NOTE.

12:36:05 16 THE PLAN WAS TO RELEASE THOSE MORTGAGES  
12:36:09 17 AND GOOTNICK TO RELEASE HIS MORTGAGE AND WE WOULD  
12:36:16 18 HAVE IN EXCHANGE FOR SECURITIES THOSE PROPERTIES  
12:36:23 19 SECURITIES.

12:36:23 20 AND IN THE MEANTIME OR SHORTLY THEREAFTER  
12:36:27 21 IT WOULD REDUCE THEM BY \$350,000 AND ON MARCH 17TH,  
12:36:32 22 2005 IN EXCHANGE FOR MY 10 PERCENT OF THE ROYAL  
12:36:42 23 PATENT COMPANY, THE AGREEMENT ALSO GAVE ME AND MY  
12:36:46 24 ASSOCIATES A GENERAL RELEASE FROM GOOTNICK.

12:36:48 25 Q OKAY. LET'S BREAK THOSE TWO TRANSACTIONS DOWN

12:36:52 1

ONE AT A TIME.

12:36:53 2

12:36:57 3

OKAY. I BELIEVE GOVERNMENT'S EXHIBIT 153  
HAS ALREADY BEEN ADMITTED INTO EVIDENCE.

12:37:06 4

12:37:08 5

FIRST OF ALL, DO YOU SEE THE FIRST PAGE  
OF THAT DOCUMENT, SIR?

12:37:09 6

A YES.

12:37:10 7

Q OKAY. AND DO YOU RECOGNIZE IT?

12:37:12 8

A YES.

12:37:12 9

12:37:17 10

Q OKAY. AND THIS IS A REAL PROPERTY MORTGAGE,  
RIGHT?

12:37:18 11

A YES.

12:37:18 12

12:37:25 13

Q OKAY. AND IT WAS RECORDED AROUND JANUARY 8TH,  
2005?

12:37:25 14

A YES.

12:37:26 15

Q OKAY. IN SAN FRANCISCO?

12:37:27 16

A YES.

12:37:29 17

12:37:33 18

Q OKAY. AND IT'S FOR -- IT'S A MORTGAGE FOR  
\$1.5 MILLION, RIGHT?

12:37:35 19

A YES.

12:37:35 20

12:37:39 21

12:37:43 22

12:37:46 23

Q OKAY. NOW, IS THIS THE MORTGAGE THAT YOU JUST  
TESTIFIED TO IN TERMS OF WHAT YOU HAD DONE AFTER  
DR. GOOTNICK HAD TRANSFERRED THE LIQUID ASSETS TO  
YOU?

12:37:46 24

A YES.

12:37:50 25

Q OKAY. AND WHAT IS YOUR -- WHAT WAS YOUR



12:37:54 1 PURPOSE IN RECORDING THIS PARTICULAR MORTGAGE?

12:37:59 2 A THE MORTGAGE WAS ONLY FOR 350,000 AND THE  
12:38:06 3 PURPOSE WAS TO PROTECT THE EQUITY AND SO I DIDN'T  
12:38:12 4 KNOW THE EXACT STATUS OF GOOTNICK'S MILLION THREE  
12:38:19 5 MORTGAGE.

12:38:20 6 AT FIRST I THOUGHT I COULD RELEASE IT  
12:38:22 7 MYSELF BECAUSE HE MADE IT PAYABLE TO A NONEXISTENT  
12:38:27 8 CORPORATION, BUT MY SUBSEQUENT RESEARCH TOLD ME  
12:38:30 9 THAT I BELIEVED THAT WHEN HE FILED THE MILLION  
12:38:39 10 THREE MORTGAGE, BECAUSE IT WAS A NONEXISTING  
12:38:41 11 CORPORATION, GOT THE MORTGAGE, THE MORTGAGEE, THE  
12:38:46 12 CREDITOR, AND IT DIDN'T EXIST, THE MORTGAGE  
12:38:53 13 REVERTED TO GOOTNICK OWNERSHIP. SO IT WAS HIS  
12:39:03 14 CORPORATION.

12:39:04 15 SO EVEN THOUGH I BOUGHT J AND J TRUST,  
12:39:06 16 INC., IN THE OCTOBER TRANSACTION, WHAT I BOUGHT WAS  
12:39:09 17 A NONEXISTENT CORPORATION. SO I BOUGHT NOTHING.  
12:39:12 18 SO I HAD CONTROL OR OWNER OF THE MORTGAGE.

12:39:16 19 Q WELL, DID YOU BELIEVE THAT AS NOW THE -- IN  
12:39:20 20 2005 AS ONE OF THE OWNERS OF J AND J TRUST, INC.,  
12:39:27 21 WHO WAS THE MORTGAGEE ON THE \$1.3 MILLION MORTGAGE,  
12:39:33 22 THAT YOU COULD HAVE IT REMOVED?

12:39:35 23 MS. WONG: OBJECTION, YOUR HONOR, ASKED  
12:39:37 24 AND ANSWERED.

12:39:37 25 THE COURT: OVERRULED. YOU CAN ANSWER

12:39:38 1 THE QUESTION, SIR.

12:39:39 2 THE WITNESS: I WASN'T REALLY SURE. I  
12:39:41 3 WAS HEDGING MY BET BECAUSE GOOTNICK COULD FORECLOSE  
12:39:45 4 AND HE COULD INCREASE IT TO \$3 MILLION BECAUSE HE  
12:39:49 5 OWNED IT INDIVIDUALLY AND I COULDN'T -- IT WASN'T A  
12:39:52 6 CORPORATION THAT I COULD SIGN FOR MOST LIKELY.

12:39:57 7 BY MR. FONG:

12:39:57 8 Q NOW, THIS DOCUMENT THAT YOU RECORDED,  
12:39:59 9 GOVERNMENT'S EXHIBIT 153 FOR THE \$1.5 MILLION,  
12:40:02 10 WOULD YOU HAVE RECORDED THAT IF YOU DID NOT -- IF  
12:40:05 11 YOU HAD NOT FOUND OUT ABOUT THE \$1.3 MILLION  
12:40:09 12 MORTGAGE?

12:40:09 13 A ABSOLUTELY NOT BECAUSE I FILED IT WITH THE  
12:40:17 14 S.E.C., AND I HAVE BEEN FILING IT WITH THE S.E.C.

12:40:19 15 Q OKAY. NOW, LET'S FOCUS ON THE SECOND PART OF  
12:40:22 16 YOUR EARLIER ANSWER IN TERMS OF I BELIEVE THAT YOU  
12:40:27 17 TESTIFIED THAT THERE WAS -- DR. GOOTNICK HAD  
12:40:31 18 ACQUIRED SOME INTEREST IN THE ROYAL PATENT  
12:40:36 19 DEVELOPMENT, RIGHT?

12:40:37 20 A CORRECT.

12:40:37 21 Q AND WHAT DID HE ACQUIRE?

12:40:43 22 A 10 PERCENT OF THE STOCK OF DIAMOND CREDIT  
12:40:46 23 BUREAU.

12:40:46 24 Q AND WHAT IS DIAMOND CREDIT BUREAU?

12:40:48 25 A INC.

12:40:49 1 Q AND INC. AND WHAT IS THAT?

12:40:50 2 A IT'S THE OLDER OF THE FIVE ROYAL PATENTS.

12:40:53 3 Q OKAY. SO DR. GOOTNICK ACQUIRED 10 PERCENT  
12:41:02 4 INTEREST IN DIAMOND CREDIT BUREAU?

12:41:04 5 MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:41:05 6 THE COURT: SUSTAINED.

12:41:07 7 BY MR. FONG:

12:41:08 8 Q OKAY. NOW, WHAT DID DR. GOOTNICK PAY, IF  
12:41:13 9 ANYTHING, FOR THE 10 PERCENT INTEREST IN DIAMOND  
12:41:21 10 CREDIT BUREAU WHICH OWNS THE ROYAL PATENT RIGHTS?

12:41:23 11 A TWO THINGS. HE GAVE A \$350,000 REDUCTION OF  
12:41:29 12 THE \$2 MILLION NOTE.

12:41:30 13 Q AND SO THIS IS THE \$2 MILLION NOTE THAT YOU  
12:41:34 14 HAD SIGNED, RIGHT, EARLIER WHEN YOU ACQUIRED THE  
12:41:39 15 GCTI ASSETS, RIGHT?

12:41:41 16 A YES. THAT'S NOT THE ONLY REASON HE DID THAT  
12:41:44 17 BUT THE OTHER THING HE DID WAS A GENERAL RELEASE.

12:41:47 18 Q OKAY. AND WHAT IS YOUR UNDERSTANDING OF WHAT  
12:41:49 19 A GENERAL RELEASE WAS?

12:41:51 20 A YOU CAN'T SUE ME.

12:41:52 21 Q OKAY. AND THAT WAS YOUR UNDERSTANDING?

12:41:55 22 A YES.

12:41:55 23 Q OKAY. SO THAT'S WHAT DR. GOOTNICK IN YOUR  
12:42:00 24 MIND, THAT'S WHAT HE PAID OR GAVE YOU IN EXCHANGE  
12:42:03 25 FOR THE 10 PERCENT INTEREST IN DIAMOND CREDIT

12:42:07 1 BUREAU?

12:42:07 2 A IT HAS TO BE MODIFIED WITH THE FACT THAT I  
12:42:11 3 OBTAINED AN APPRAISAL ON THE BUILDING, THE SAN  
12:42:14 4 FRANCISCO BUILDING AND THE MARKET VALUE OF THE  
12:42:16 5 APPRAISAL WAS ONLY A MILLION TWO.

12:42:19 6 SO A GOOD PART OF THAT REDUCTION WAS  
12:42:22 7 BECAUSE HE REALIZED HE SOLD ME THE BUILDING AT TOO  
12:42:25 8 HIGH A PRICE.

12:42:26 9 Q ALL RIGHT. OKAY. NOW, THE -- WAS THIS  
12:42:33 10 AGREEMENT PUT INTO WRITING IN ANY WAY?

12:42:38 11 A YES. YES. THE BILL OF SALE WAS RECORDED BY  
12:42:47 12 ME IN HAWAII.

12:42:47 13 Q NOW, WE HAVE HEARD TESTIMONY FROM YOU ABOUT A  
12:42:53 14 LOT OF BILL OF SALES. I WANT YOU TO BE MORE  
12:42:56 15 SPECIFIC. IDENTIFY WHICH BILL OF SALE THAT YOU  
12:42:58 16 WERE JUST REFERRING TO?

12:42:59 17 A MARCH 17TH, DATED MARCH 17TH, 2005, RECORDED  
12:43:03 18 MARCH 24TH, 2004.

12:43:05 19 Q OKAY. SO THIS TRANSACTION, IN WHICH DR. IRWIN  
12:43:13 20 GOOTNICK, IN CONSIDERATION FOR REDUCING THE  
12:43:16 21 PROMISSORY NOTE BY \$350,000 AND GIVING YOU A  
12:43:19 22 GENERAL RELEASE AND HE GOT THE 10 PERCENT OF  
12:43:27 23 OWNERSHIP IN DIAMOND BUREAU, THIS HAD BEEN DONE  
12:43:31 24 ABOUT, WHAT, SIX MONTHS AFTER THE OCTOBER BILL OF  
12:43:34 25 SALE WHEREBY GCTI'S ASSETS WERE TRANSFERRED TO YOU?

12:43:39 1 A YES, FIVE AND A HALF MONTHS.

12:43:46 2 Q OKAY. THIS WOULD HAVE BEEN IN MARCH OF 2005,  
12:43:56 3 RIGHT?

12:43:56 4 A YES.

12:43:57 5 Q AND DID YOU, AFTER THAT, DID YOU AND  
12:43:59 6 DR. GOOTNICK HAVE ANY MORE BUSINESS TRANSACTIONS?

12:44:01 7 A NO.

12:44:06 8 Q OKAY. I CAN GO INTO THE NEXT AREA OR --

12:44:17 9 THE COURT: CAN YOU GIVE ME A BEST TIME  
12:44:19 10 ESTIMATE?

12:44:20 11 MR. FONG: I HAVE PROBABLY ABOUT HALF AN  
12:44:21 12 HOUR OF THE BANKRUPTCY STUFF. IT COULD BE A LITTLE  
12:44:40 13 LONGER. I'M TRYING TO GIVE YOU MY BEST ESTIMATE.

12:44:43 14 THE COURT: WHY DON'T YOU GO INTO THE  
12:44:44 15 NEXT TOPIC.

12:44:46 16 BY MR. FONG:

12:44:46 17 Q BY THE WAY, BEFORE WE MOVE INTO OUR NEXT STOP,  
12:44:49 18 IN ADDITION TO DR. GOOTNICK STARTING WAY BACK IN  
12:44:51 19 APRIL OF 2004 TO WHAT YOU JUST TESTIFIED TO IN  
12:44:54 20 MARCH OF 2005, WAS SAM FUNG INVOLVED IN ANY OF  
12:44:59 21 THESE TRANSACTIONS?

12:45:00 22 A SAM FUNG WIRED ME ABOUT \$8,000 SUPPOSEDLY FROM  
12:45:12 23 GOOTNICK.

12:45:12 24 Q AND THAT WOULD HAVE BEEN AT THE BEGINNING OF  
12:45:15 25 YOUR RELATIONSHIP WITH DR. GOOTNICK, RIGHT?

12:45:17 1

A YES.

12:45:19 2

Q BESIDES THAT WIRING YOU THE MONEY, DID SAM

12:45:23 3

FUNG HAVE ANY PARTICIPATION IN ANY OF THE

12:45:25 4

AGREEMENTS THAT YOU REACHED WITH DR. GOOTNICK?

12:45:28 5

A NO.

12:45:28 6

Q WAS SAM FUNG SUPPOSED TO PARTICIPATE IN ANY OF

12:45:38 7

THESE TRANSACTIONS IN ANY CAPACITY?

12:45:40 8

A HE WAS WORKING FOR GOOTNICK.

12:45:41 9

Q OKAY. BUT WAS HE PART OF -- REMEMBER MR. FUNG

12:45:47 10

WAS PART OF -- HE WAS SUPPOSED TO DO SOMETHING

12:45:50 11

INSOFAR AS THE BROCK TRANSACTION?

12:45:52 12

A NO.

12:45:52 13

Q AND SO WHAT MY QUESTION IS, IS THERE, INSOFAR

12:45:56 14

AS THE GOOTNICK TRANSACTIONS, WAS SAM FUNG IN YOUR

12:45:59 15

MIND SUPPOSED TO DO ANYTHING?

12:46:01 16

A NO, NOT FOR ME.

12:46:05 17

Q NOW, YOU HEARD TESTIMONY ABOUT THE PHONE CALLS

12:46:15 18

THAT SAM FUNG MADE TO DR. GOOTNICK IN EARLY MARCH

12:46:19 19

OF 2006?

12:46:20 20

A YES.

12:46:20 21

Q NOW, LET ME JUST ASK YOU FIRST OFF, AT ANY

12:46:28 22

TIME DID YOU TELL SAM FUNG TO THREATEN DR. IRWIN

12:46:31 23

GOOTNICK?

12:46:31 24

A ABSOLUTELY NOT.

12:46:36 25

Q DID YOU TELL SAM FUNG AT ANY TIME THAT TO

12:46:40 1  
12:46:44 2  
12:46:46 3  
12:46:48 4  
12:46:49 5  
12:46:50 6  
12:46:54 7  
12:46:57 8  
12:46:57 9  
12:47:05 10  
12:47:09 11  
12:47:10 12  
12:47:10 13  
12:47:20 14  
12:47:22 15  
12:47:31 16  
12:47:33 17  
12:47:40 18  
12:47:41 19  
12:47:42 20  
12:47:46 21  
12:47:48 22  
12:47:52 23  
12:47:55 24  
12:47:59 25

PRESSURE DR. GOOTNICK INTO DROPPING THE CIVIL

LAWSUIT, HIS CIVIL LAWSUIT AGAINST YOU?

A NO, I DIDN'T -- I DIDN'T WANT TO SETTLE.

Q OKAY.

A I TOLD HIM THAT.

Q OKAY. NOW -- BUT YOU DID HAVE TELEPHONE CALLS  
WITH SAM FUNG RIGHT AROUND THAT PERIOD OF TIME; IS  
THAT TRUE?

A YES.

Q BUT DID YOU EVER TELL SAM FUNG IN ANY WAY TO  
BLACKMAIL DR. GOOTNICK?

A NO.

Q OKAY. NOW, YOU HEARD MR. FUNG ON THE RECORDED  
TELEPHONE CALLS TALKING TO DR. GOOTNICK ABOUT THE  
FACT THAT IF DR. GOOTNICK, IF HE DID NOT DROP THE  
CIVIL LAWSUIT AGAINST YOU, YOU WOULD EXPOSE  
DR. GOOTNICK'S ALLEGED TAX FRAUD IN THE BANKRUPTCY  
CASE, RIGHT?

A I HEARD THAT.

Q NOW, AT THE TIME THAT SAM FUNG MADE THESE  
PHONE CALLS, I GUESS THE EARLIER ONE WOULD HAVE  
BEEN AROUND MARCH 2ND, 2006, AT THAT POINT IN TIME,  
WHAT WAS YOUR UNDERSTANDING OF WHAT YOU HAD --  
WELL, LET ME ASK YOU, AS OF MARCH 2ND, 2006, BEFORE  
THAT, HAD YOU ALREADY MADE IN A PUBLIC DOCUMENT

12:48:04 1 ALLEGATIONS THAT DR. IRWIN GOOTNICK HAD COMMITTED  
12:48:08 2 TAX FRAUD?

12:48:09 3 A I NOT ONLY DID, I COMPLETED MY THOUGHT ON IT.  
12:48:20 4 I, AND MY C.P.A., COMPLETED OUR THOUGHT ON IT BY  
12:48:26 5 FEBRUARY 24TH, 2006 --

12:48:28 6 Q OKAY. BUT --

12:48:30 7 A -- A WEEK BEFORE THE PHONE CALL.

12:48:32 8 Q OKAY. BUT EVEN BEFORE THAT, HAD YOU IN --  
12:48:36 9 WELL, YOU HAD FILED FOR BANKRUPTCY IN HAWAII?

12:48:40 10 A IN DECEMBER OF 2005.

12:48:44 11 Q AND THAT WAS FILED UNDER THE COMPANY QUALITY  
12:48:47 12 INCOME SYSTEMS, INC.; IS THAT CORRECT?

12:48:49 13 A YES.

12:48:49 14 Q OKAY. NOW, THAT QUALITY INCOME SYSTEMS, INC.,  
12:48:58 15 HOW DID THAT CONNECT WITH YOUR DEALINGS WITH  
12:49:00 16 DR. GOOTNICK?

12:49:01 17 A IT BOUGHT THE ASSETS OF GCTI. IT BOUGHT GCTI  
12:49:08 18 IF I'M NOT MISTAKEN.

12:49:09 19 Q OKAY. AND THE BANKRUPTCY CASE THAT YOU FILED  
12:49:16 20 FOR QUALITY SYSTEMS INCOME, INC., CARRIES A  
12:49:19 21 BANKRUPTCY CASE NUMBER OF 05-50023; IS THAT TRUE?

12:49:27 22 A YES.

12:49:27 23 Q AND YOU REMEMBERED THAT WITHOUT REFERRING TO A  
12:49:29 24 DOCUMENT?

12:49:29 25 A I WAS A PARTY TO THE BANKRUPTCY.



12:49:33 1 Q OKAY. NOW, AS PART OF THAT PARTICULAR  
12:49:38 2 BANKRUPTCY, WERE THE GOOTNICKS MADE PARTIES TO THAT  
12:49:44 3 BANKRUPTCY PROCEEDINGS?

12:49:45 4 A ABSOLUTELY.

12:49:46 5 Q AND WITHIN THAT BANKRUPTCY PROCEEDING, THE  
12:49:48 6 QUALITY INCOME SYSTEMS, INC., BANKRUPTCY -- WELL,  
12:49:54 7 FIRST OF ALL, WHEN WAS THAT FILED?

12:49:55 8 MS. WONG: OBJECTION, ASKED AND ANSWERED.

12:49:57 9 THE COURT: YOU CAN ANSWER THE QUESTION,  
12:50:00 10 SIR.

12:50:00 11 THE WITNESS: DECEMBER 9TH, 2005, I  
12:50:03 12 BELIEVE.

12:50:04 13 BY MR. FONG:

12:50:05 14 Q OKAY. NOW, AS PART OF THAT BANKRUPTCY CASE,  
12:50:07 15 WAS THERE -- WITHIN THAT, WAS THERE LITIGATION  
12:50:09 16 BETWEEN YOU ON THE ONE HAND OR YOU AND THE  
12:50:13 17 COMPANIED THAT YOU CONTROLLED ON THE ONE HAND AND  
12:50:16 18 DR. IRWIN AND SUSAN GOOTNICK ON THE OTHER HAND?

12:50:19 19 A YES, THEY WERE DEFENDANTS INDIVIDUALLY.

12:50:25 20 Q OKAY. NOW, THIS WAS WITHIN THE BANKRUPTCY  
12:50:28 21 COURT SYSTEM IN HAWAII, RIGHT?

12:50:30 22 A YES.

12:50:35 23 Q NOW, IN 2005, DID YOU HAVE AN UNDERSTANDING,  
12:50:38 24 AT THE END OF 2005, EARLY 2006, DID YOU HAVE AN  
12:50:41 25 UNDERSTANDING AS TO WHAT KIND OF A FILING SYSTEM

12:50:46 1 WAS IN EFFECT WITH THE HAWAII BANKRUPTCY COURT?

12:50:50 2 MS. WONG: OBJECTION, RELEVANCE.

12:50:51 3 MR. FONG: NOTICE, YOUR HONOR.

12:50:55 4 THE COURT: WHEN YOU SAY FILING SYSTEM,  
12:50:57 5 WHAT ARE YOU SPEAKING?

12:51:00 6 MR. FONG: LET ME ASK A DIFFERENT  
12:51:01 7 QUESTION.

12:51:01 8 THE COURT: THE QUESTION IS WITHDRAWN.  
12:51:03 9 BY MR. FONG:

12:51:03 10 Q AT THE TIME OF THIS BANKRUPTCY PROCEEDING DID  
12:51:10 11 YOU KNOW HOW A DOCUMENT WOULD BE FILED WITH THE  
12:51:12 12 BANKRUPTCY COURT IN HAWAII?

12:51:13 13 MS. WONG: OBJECTION. THIS GOES TO  
12:51:16 14 RELEVANCE.

12:51:16 15 THE COURT: I'LL ALLOW THAT QUESTION.  
12:51:18 16 YOU CAN ANSWER THE QUESTION, SIR.

12:51:19 17 THE WITNESS: THANK YOU. YES, IT'S  
12:51:21 18 ELECTRONIC FILING. I FORGET THE INITIALS, BUT IT'S  
12:51:28 19 ECF, BUT IT'S A DOCUMENT WHEN IT'S FILED IT  
12:51:32 20 AUTOMATICALLY IS FORWARDED TO THE OTHER PARTIES.

12:51:35 21 BY MR. FONG:

12:51:35 22 Q OKAY.

12:51:36 23 A ELECTRONICALLY.

12:51:37 24 Q OKAY. SO IF SOMEBODY FILED A DOCUMENT, AS IF  
12:51:40 25 SOMEBODY FILED A DOCUMENT IN A CASE THAT YOU WERE

12:51:43 1 INVOLVED IN, IN A BANKRUPTCY COURT IN LATE 2005 AND  
12:51:46 2 EARLY 2006, YOU, AS A PARTY, YOU OR YOUR ATTORNEY  
12:51:50 3 WOULD GET AN AUTOMATIC ELECTRONIC NOTIFICATION; IS  
12:51:56 4 THAT CORRECT?

12:51:56 5 A CORRECT.

12:51:56 6 Q AND YOU YOURSELF HAVE USED THIS SYSTEM, RIGHT?

12:51:59 7 A YES.

12:51:59 8 Q OKAY. AND ALSO, THIS ELECTRONIC FILING  
12:52:02 9 SYSTEM, BESIDES THE ATTORNEYS INVOLVED IN THE CASE,  
12:52:06 10 COULD OTHER PEOPLE HAVE ACCESS TO IT?

12:52:07 11 A YES, IT'S PUBLIC.

12:52:09 12 Q OKAY. AND WHAT DOES A PERSON HAVE TO DO, A  
12:52:13 13 GENERAL PUBLIC PERSON, LET'S JUST SAY SOMEBODY WHO  
12:52:16 14 IS CURIOUS, WHAT IS YOUR UNDERSTANDING OF WHAT THAT  
12:52:18 15 PERSON WOULD HAVE TO DO IN ORDER TO HAVE ACCESS TO  
12:52:21 16 THE ELECTRONIC FILING SYSTEM?

12:52:24 17 MS. WONG: OBJECTION AS TO RELEVANCE.

12:52:26 18 THE COURT: SUSTAINED.

12:52:26 19 BY MR. FONG:

12:52:29 20 Q OKAY. BUT YOU YOURSELF HAD, BESIDES YOUR  
12:52:33 21 ATTORNEY, YOU YOURSELF HAD ACCESS TO THE ELECTRONIC  
12:52:35 22 FILING SYSTEM; IS THAT CORRECT?

12:52:37 23 A YES, IF ANYBODY HAD ACCESS, WE WOULD GET A  
12:52:41 24 PASS CODE.

12:52:41 25 Q OKAY. NOW, THE -- IN THE BANKRUPTCY CASE IN

12:52:47 1 HAWAII, THE QUALITY INCOME SYSTEMS, INC., -- WELL,  
12:52:51 2 FIRST OF ALL, THERE WAS MORE THAN ONE BANKRUPTCY  
12:52:54 3 CASE, RIGHT?

12:52:54 4 A YES.

12:52:55 5 Q AND IS THE QUALITY INCOME SYSTEMS, INC., THE  
12:52:58 6 FIRST ONE?

12:52:58 7 A IT'S THE MAIN ONE.

12:53:00 8 Q OKAY. WAS IT THE FIRST ONE THOUGH?

12:53:02 9 A YES.

12:53:02 10 Q OKAY. NOW, IN THAT CASE DID YOU FILE ANY  
12:53:07 11 PLEADINGS WITH THE COURT IN WHICH YOU MADE THE  
12:53:11 12 ALLEGATIONS THAT DR. GOOTNICK -- YOU BELIEVED THAT  
12:53:15 13 DR. GOOTNICK HAD COMMITTED TAX FRAUD?

12:53:17 14 A YES.

12:53:17 15 Q OKAY. WHEN DID YOU FILE THAT?

12:53:19 16 A I FILED IT INDIVIDUALLY AND THE ATTORNEY WAS A  
12:53:25 17 C.P.A. ALSO FILED.

12:53:27 18 Q BUT WHEN?

12:53:28 19 A THERE'S ONE I REMEMBER FEBRUARY 10TH.

12:53:32 20 THE COURT: YOU'RE ASKING WHEN HE FILED?

12:53:34 21 MR. FONG: RIGHT.

12:53:35 22 Q YOU OR YOUR ATTORNEY?

12:53:39 23 A I THINK FEBRUARY 10TH.

12:53:40 24 Q WHAT YEAR?

12:53:41 25 A 2006.

12:54:04 1 Q NOW, IN THAT FILING, DID YOU GO INTO DETAILS  
12:54:06 2 OF WHAT YOU BELIEVED WERE SPECIFIC INSTANCES OF TAX  
12:54:09 3 FRAUD BY DR. GOOTNICK?

12:54:11 4 A I DID AND SO DID THE C.P.A.

12:54:13 5 Q OKAY. AND NOW, THIS WAS DONE ABOUT A MONTH  
12:54:18 6 BEFORE SAM FUNG HAD MADE THOSE TELEPHONE CALLS?

12:54:26 7 A TWO WEEKS TO A MONTH.

12:54:28 8 Q OKAY. AND NOW, IN THE -- AND IN THE  
12:54:39 9 BANKRUPTCY -- LET ME ASK YOU, WAS THERE -- DID YOU  
12:54:44 10 GET ANY RESPONSE FROM DR. GOOTNICK'S ATTORNEY IN  
12:54:46 11 RESPONSE TO THE FILINGS THAT YOU MADE IN WHICH YOU  
12:54:52 12 WERE TELLING DR. GOOTNICK HAD COMMITTED TAX FRAUD?

12:54:54 13 A WELL, EARLIER ON JANUARY 23RD --

12:55:03 14 MS. WONG: OBJECTION, NONRESPONSIVE.

12:55:04 15 THE COURT: SUSTAINED.

12:55:05 16 BY MR. FONG:

12:55:08 17 Q AFTER YOU FILED THE ALLEGATIONS OF TAX FRAUD  
12:55:10 18 AGAINST DR. GOOTNICK, I THINK YOU SAID IT WAS LIKE  
12:55:13 19 FEBRUARY 10TH OR SO?

12:55:14 20 A BUT THE BANKRUPTCY FILING IN 2005 CONTAINED  
12:55:19 21 ALLEGATIONS. THE INITIAL FILINGS CONTAINED  
12:55:21 22 ALLEGATIONS OF TAX FRAUD BACK IN DECEMBER OF 2005.

12:55:26 23 Q WELL, THEN LET ME ASK YOU THIS, BEFORE MARCH  
12:55:30 24 5TH, 2006, HAD YOU RECEIVED ANY RESPONSE FROM  
12:55:33 25 DR. GOOTNICK'S ATTORNEY DISPUTING THE FACT THAT YOU

12:55:36 1 HAD MADE THESE ALLEGATIONS OF TAX FRAUD AGAINST  
12:55:39 2 DR. GOOTNICK?

12:55:40 3 A YES, BACK IN JANUARY DR. GOOTNICK FILED A  
12:55:43 4 DECLARATION AND I RECALL RECEIVING.

12:55:46 5 MS. WONG: OBJECTION TO ANY TESTIMONY  
12:55:47 6 REGARDING THE CONTENTS OF THAT DOCUMENT IS HEARSAY.

12:55:50 7 MR. FONG: SUSTAINED. THAT PORTION OF  
12:55:52 8 THE ANSWER IS STRICKEN REGARDING THE CONTENTS OF  
12:55:55 9 ANY FILING.

12:55:56 10 MR. FONG: BUT THAT PART OF THE ANSWER  
12:55:57 11 WHERE HE DID RECEIVE THE RESPONSE IS IN THE RECORD,  
12:56:00 12 RIGHT? THANK YOU, YOUR HONOR. OKAY.

12:56:01 13 THE COURT: AND THE ANSWER WAS YES TO  
12:56:03 14 YOUR QUESTION. I NODDED MY HEAD. PARDON ME.

12:56:06 15 MR. FONG: THANK YOU, YOUR HONOR.

12:56:07 16 Q OKAY. NOW, AT SOME POINT WAS THE QUALITY  
12:56:14 17 INCOME SYSTEMS, INC., BANKRUPTCY DISMISSED?

12:56:17 18 A YES.

12:56:18 19 Q AND DO YOU KNOW APPROXIMATELY WHEN THAT WAS  
12:56:22 20 DISMISSED?

12:56:22 21 A I KNOW EXACTLY WHEN IT WAS DISMISSED. THE  
12:56:26 22 HEARING WAS FEBRUARY 21ST, 2006.

12:56:28 23 Q OKAY. WOULD THAT BE ABOUT TWO WEEKS BEFORE OR  
12:56:31 24 A WEEK OR SO BEFORE SAM FUNG HAD MADE THOSE PHONE  
12:56:36 25 CALLS?

12:56:36 1 A ALMOST TWO WEEKS.

12:56:37 2 Q OKAY. NOW, WERE YOU ACTUALLY IN COURT ON  
12:56:43 3 FEBRUARY 21ST, 2006 WHEN THE CASE WAS DISMISSED?

12:56:48 4 A YES, AND AT THAT TIME THE SECOND BANKRUPTCY  
12:56:52 5 WAS ALREADY FILED.

12:56:52 6 Q NOW, WAS DR. GOOTNICK'S ATTORNEY IN COURT ON  
12:57:00 7 FEBRUARY 21ST, 2006?

12:57:02 8 A YES.

12:57:02 9 Q AND DID THE COURT ORDER A DISMISSAL OF THE  
12:57:10 10 CASE?

12:57:10 11 A YES, AND COMMENTED --

12:57:12 12 MS. WONG: OBJECTION TO THE COMMENT.

12:57:13 13 THE COURT: EXCUSE ME. SUSTAINED.

12:57:15 14 HEARSAY, IT'S STRICKEN.

12:57:16 15 BY MR. FONG:

12:57:18 16 Q MR. LIGHTER, I'M GOING TO SHOW YOU A DOCUMENT  
12:57:20 17 THAT HAS BEEN MARKED AS DEFENSE EXHIBIT RR AS IN  
12:57:23 18 RONALD TWICE.

12:57:39 19 MR. O'REILLY: OBJECTION. WE WOULD LIKE  
12:57:41 20 A COPY OF THE DOCUMENT, PLEASE.

12:57:43 21 MR. FONG: I'M SORRY.

12:57:43 22 THE COURT: DO YOU HAVE A COPY NOW?

12:57:45 23 MR. O'REILLY: YES, WE HAVE A COPY.

12:57:46 24 MR. FONG: I APOLOGIZE. I ACTUALLY HAD  
12:57:49 25 THOUGHT I HAD GIVEN THAT OVER TO COUNSEL. I

12:57:50 1 APOLOGIZE.

12:57:51 2 ANYWAY, I'LL LET COUNSEL HAVE A MOMENT.

12:57:56 3 IT'S ONLY A ONE-PAGE DOCUMENT. THANK YOU.

12:58:01 4 Q MR. LIGHTER, DO YOU SEE THE ONE-PAGE DOCUMENT  
12:58:04 5 THAT IS IN FRONT OF YOU DEFENDANT'S EXHIBIT RR AS  
12:58:06 6 IN RONALD?

12:58:07 7 A I DO.

12:58:07 8 Q AND WHAT IS THAT DOCUMENT?

12:58:09 9 A ORDER DISMISSING CASE.

12:58:11 10 Q OKAY. AND IS THIS A DOCUMENT THAT IS TO THE  
12:58:18 11 BEST OF YOUR KNOWLEDGE PART OF THE BANKRUPTCY COURT  
12:58:21 12 FILE IN THE QUALITY INCOME SYSTEMS, INC., CASE,  
12:58:25 13 CASE NUMBER 05-50023?

12:58:28 14 A YES, BUT IT INVOLVES THE SECOND BANKRUPTCY,  
12:58:34 15 TOO.

12:58:34 16 Q OKAY. WE'LL GET THERE. BUT THAT'S WHAT IT  
12:58:37 17 IS, RIGHT?

12:58:37 18 A RIGHT.

12:58:38 19 MR. FONG: YOUR HONOR, I WOULD MOVE TO  
12:58:40 20 INTRODUCE -- ADMIT INTO EVIDENCE DEFENDANT'S  
12:58:43 21 EXHIBIT RR, THE FEBRUARY 22ND OR 21ST -- ACTUALLY  
12:58:49 22 IT'S DATED FEBRUARY 22ND, 2006, ORDER OF THE  
12:58:53 23 HAWAIIIN BANKRUPTCY COURT DISMISSING THE QUALITY  
12:58:56 24 INCOME SYSTEMS, INC., BANKRUPTCY.

12:58:59 25 MS. WONG: OBJECTION, HEARSAY.



12:59:00 1 MR. FONG: IT'S JUDICIAL NOTICE, YOUR  
12:59:02 2 HONOR.

12:59:02 3 THE COURT: OKAY. THANK YOU. WE'LL TAKE  
12:59:04 4 OUR RECESS AT THIS TIME, LADIES AND GENTLEMEN.  
12:59:10 5 THANK YOU FOR YOUR PATIENCE. THE RECORD SHOULD  
12:59:11 6 REFLECT IT'S ABOUT THREE MINUTES TO 1:00 O'CLOCK.  
12:59:15 7 WE MARCHED ON THROUGH THE NOON HOUR, AND I  
12:59:17 8 APPRECIATE YOUR ATTENTION.

12:59:18 9 SO WE'LL RECESS NOW.

12:59:20 10 I ASKED A QUESTION OF THE GROUP EARLIER  
12:59:23 11 ABOUT AN 8:00 O'CLOCK START AND IF THAT COMPORTS  
12:59:27 12 WITH YOUR SCHEDULE. I'M HAPPY TO BEGIN OUR  
12:59:29 13 PROCEEDINGS TOMORROW AT 8:00 A.M.

12:59:31 14 IS THERE ANYONE WHO HAS DIFFICULTY MAKING  
12:59:34 15 AN 8:00 O'CLOCK START? IF SO, PLEASE RAISE YOUR  
12:59:37 16 HAND AND DON'T BE SHY ABOUT IT. WE CAN START AT  
12:59:40 17 8:30 ALSO.

12:59:41 18 I SEE NO HANDS. SO WE'LL SEE YOU AT 8:00  
12:59:45 19 O'CLOCK TOMORROW MORNING. AND I'M ALSO ADVISED BY  
12:59:47 20 STAFF THAT THEY WILL IN ALL LIKELIHOOD HAVE A  
12:59:49 21 CARDBOARD BOX WITH SOME CAFFEINATED BEVERAGE IN THE  
12:59:54 22 JURY ROOM FOR YOU AND I EXPECT THAT THERE WILL BE  
12:59:56 23 OTHER REFRESHMENTS FROM STAFF.

12:59:58 24 AND SO I GIVE YOU THAT FOR YOUR PLANNING  
13:00:00 25 PURPOSES TOMORROW MORNING.

13:00:01 1 SO THANK YOU. WE'LL BE IN RECESS. THANK  
13:00:03 2 YOU.

13:00:42 3 (WHEREUPON, THE PROCEEDINGS IN THIS  
13:00:43 4 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

13:00:43 5 MR. FONG: MAY MR. LIGHTER STAND DOWN?

13:00:44 6 THE COURT: YES. YOU MAY STEP DOWN. THE  
13:00:47 7 RECORD SHOULD REFLECT THAT THE JURY HAS LEFT THE  
13:00:50 8 COURTROOM.

13:00:51 9 ALL OTHER PARTIES ARE PRESENT.

13:00:54 10 MR. LIGHTER, CAN YOU LEAVE THOSE DOCUMENTS THERE?  
13:00:56 11 THANK YOU.

13:00:56 12 NOW, THERE'S A -- YOU'RE ASKING THAT RR,  
13:01:01 13 WHICH IS AN ORDER DISMISSING A CASE IN HAWAII, BE  
13:01:07 14 ADMITTED. THERE'S A HEARSAY OBJECTION I THINK AS  
13:01:10 15 TO THAT.

13:01:10 16 YOUR RESPONSE TO THE HEARSAY OBJECTION?

13:01:12 17 MR. FONG: JUDICIAL NOTICE, YOUR HONOR.  
13:01:13 18 I BELIEVE IT'S RULE 201, THE ORDER OF THE COURT IS  
13:01:18 19 SOMETHING THAT IS SUBJECT TO THE HEARSAY RULE.

13:01:42 20 THE COURT: WHAT CODE SECTION DID YOU  
13:01:44 21 CITE? I SEE BOOKS OPENING HERE.

13:01:46 22 MR. FONG: I BELIEVE IT'S 201. LET ME  
13:01:48 23 CHECK HERE, YOUR HONOR.

13:01:59 24 MR. O'REILLY: YOUR HONOR, 201 DOES ALLOW  
13:02:01 25 THE COURT TO TAKE JUDICIAL NOTICE OF ADJUDICATED

13:02:04 1           FACTS.

13:02:04 2                   OUR OBJECTION IS THE PIECE OF PAPER.  
13:02:06 3           THERE'S NO DISPUTE THAT THE BANKRUPTCY OF QUALITY  
13:02:10 4           SYSTEMS, INC., WAS DISMISSED ON FEBRUARY 21ST OF  
13:02:15 5           2006. IT'S NOT AN ISSUE IN THIS CASE.

13:02:20 6                   THE COURT:   SO IT'S A CUMULATIVE  
13:02:22 7           OBJECTION THEN?

13:02:22 8                   MR. O'REILLY:   CORRECT, YOUR HONOR.

13:02:23 9                   MR. FONG:   YOUR HONOR, AS WE ALL KNOW,  
13:02:25 10           THE WRITTEN RULE IS SO MUCH MORE POWERFUL AND HAS  
13:02:30 11           MORE OF A LASTING EFFECT WITH THE READER OR THE  
13:02:33 12           AUDIENCE THAN --

13:02:36 13                   THE COURT:   MAY I SEE THIS DOCUMENT?

13:02:39 14                   MR. O'REILLY:   I'LL BRING IT UP TO YOUR  
13:02:40 15           HONOR.   AND ACTUALLY WE DO HAVE ONE OTHER OBJECTION  
13:02:43 16           WHICH IS RELEVANCE.

13:02:46 17                   THERE WAS ANOTHER ONGOING -- AS  
13:02:49 18           MR. LIGHTER TESTIFIED, THE SUCCESSOR BANKRUPTCY HAD  
13:02:51 19           ALREADY STARTED, SO THE RELEVANCE OF THIS DISMISSAL  
13:02:57 20           ESCAPES ME.

13:03:03 21                   THE COURT:   WHAT IS THE RELEVANCE OF THIS  
13:03:04 22           IF THERE HAS ALREADY BEEN TESTIMONY TO THIS AND THE  
13:03:06 23           FACT THAT THERE IS THE OTHER, THE SECOND BANKRUPTCY  
13:03:09 24           THAT PLAYS IN THIS CASE?

13:03:11 25                   MR. FONG:   YOUR HONOR, THE RELEVANCE IS

13:03:15 1 THAT THIS IS THE MAIN BANKRUPTCY CASE AND  
13:03:18 2 MR. LIGHTER, OF COURSE, OUR CONTENTION IS THAT IT  
13:03:24 3 MAKES ABSOLUTELY NO SENSE FOR MR. LIGHTER TO  
13:03:26 4 CONTINUE TO THREATEN IN THE BANKRUPTCY CASE AS SAM  
13:03:29 5 FUNG WOULD HAVE US BELIEVE, THREATEN TO MAKE  
13:03:32 6 FURTHER DISCLOSURES AGAINST OR TO MAKE DISCLOSURES  
13:03:38 7 OF TAX FRAUD AGAINST DR. IRWIN GOOTNICK WHEN, IN  
13:03:41 8 FACT, IN THE MAIN CASE, THE BANKRUPTCY CASE, IT WAS  
13:03:44 9 ALREADY DISMISSED TWO WEEKS BEFORE THE PHONE CALLS  
13:03:46 10 WERE MADE.

13:03:47 11 THE COURT: ISN'T THAT IN EVIDENCE  
13:03:49 12 ALREADY, THAT FACT?

13:03:54 13 MR. FONG: YOUR HONOR, YES, IT IS.  
13:03:56 14 AGAIN, IT IS A ONE-PAGE DOCUMENT. I DON'T SEE  
13:03:59 15 WHY -- AND FIRST OF ALL, YOUR HONOR, THIS IS NOT  
13:04:01 16 SUBJECT TO THE HEARSAY EXCEPTION.

13:04:08 17 SO THE STARTING POINT IS WHY IS THE  
13:04:10 18 GOVERNMENT OBJECTING TO THIS PARTICULAR DOCUMENT ON  
13:04:11 19 THE BASIS OF HEARSAY?

13:04:12 20 A COURT DOCUMENT THAT SIMPLY PROVIDES  
13:04:18 21 NOTICE TO THE READERS IS NOT A HEARSAY DOCUMENT.

13:04:20 22 THE COURT: LET ME JUST ASK THE  
13:04:21 23 GOVERNMENT, IS THERE ANY ARGUMENT DOUBTING THE  
13:04:24 24 AUTHENTICITY? I RECOGNIZE THAT THIS IS A  
13:04:28 25 PHOTOCOPY.

13:04:29 1 MR. O'REILLY: NO, YOUR HONOR. AS I SAID  
13:04:30 2 EARLIER, IT IS NOT DISPUTED. IT'S CUMULATIVE  
13:04:34 3 EVIDENCE, AND IT'S DESIGNED FOR THE PURPOSE TO  
13:04:37 4 MISLEAD THE JURY. THEY WANT TO ARGUE THAT, OH,  
13:04:39 5 LIGHTER WOULD HAVE NEVER HAVE DONE THIS BECAUSE  
13:04:41 6 THIS WAS DISMISSED.

13:04:44 7 WELL, THAT COMPLETELY AVOIDS THE FACT  
13:04:47 8 THAT THE GOOTNICK CHARITABLE TRUST BANKRUPTCY, AS  
13:04:50 9 THE DEFENDANT ALREADY TESTIFIED TO, HAD ALREADY  
13:04:52 10 STARTED. IT WAS NOT, IN FACT, TO HELP THE JURY.  
13:04:54 11 IT WAS TO, IN FACT, CONFUSE THEM.

13:04:57 12 THE COURT: THANK YOU. SO I DO RECOGNIZE  
13:04:58 13 THAT THERE COULD BE SOME CONFUSION IF THIS WAS  
13:05:02 14 ADMITTED REGARDING THE TWO BANKRUPTCIES.

13:05:03 15 I AM GOING TO ALLOW YOU -- I WILL ALLOW  
13:05:05 16 IT AND THEN COUNSEL CAN -- YOU CAN ARGUE THIS AS  
13:05:09 17 YOU NEED. SO I WILL, OVER THE GOVERNMENT'S  
13:05:11 18 OBJECTION, ADMIT RR.

13:05:13 19 NOW, LET ME -- I WANT TO AGAIN ASK YOUR  
13:05:20 20 BEST ESTIMATE. WHEN I LAST ASKED IT WAS ABOUT  
13:05:24 21 15 MINUTES -- YOU TOLD ME YOU HAD ABOUT 30 MINUTES.  
13:05:27 22 DO YOU HAVE ABOUT 15 MINUTES LEFT IN YOUR DIRECT  
13:05:27 23 EXAMINATION?

13:05:27 24  
13:05:27 25 (WHEREUPON, DEFENDANT'S EXHIBIT RR, HAVING

13:05:27 1 BEEN PREVIOUSLY MARKED FOR IDENTIFICATION,  
13:05:30 2 WAS ADMITTED INTO EVIDENCE.)

13:05:30 3 MR. FONG: I SUSPECT SO. I WOULD SAY AT  
13:05:32 4 THE VERY, VERY MOST ON THE OUTSIDE NO MORE THAN  
13:05:35 5 30 MINUTES, AND, AGAIN, THIS IS MY BEST ESTIMATE  
13:05:38 6 AND --

13:05:39 7 THE COURT: I UNDERSTAND.

13:05:40 8 MR. FONG: BUT I HIGHLY DOUBT THAT IT  
13:05:42 9 WILL BE MORE THAN 30 MINUTES.

13:05:44 10 THE COURT: SO WE'RE GOING TO START AT  
13:05:45 11 8:00 A.M. TOMORROW MORNING, 8:00 A.M. TOMORROW  
13:05:49 12 MORNING HERE.

13:05:55 13 I ANTICIPATE THAT WE'LL BE ABLE TO ARGUE  
13:05:57 14 AND INSTRUCT TOMORROW AFTERNOON, THAT'S MY GUESS,  
13:06:00 15 TOMORROW AFTERNOON, AND IT MAY BE THAT WE WILL USE  
13:06:02 16 SOME TIME FOLLOWING THE CLOSE OF EVIDENCE, WE HAVE  
13:06:07 17 SOME HOUSEKEEPING THINGS TO DO.

13:06:09 18 THERE'S A RULE 29 MOTION THAT IS WITH THE  
13:06:11 19 COURT NOW, AND I'LL WAIT UNTIL THE CLOSE OF  
13:06:13 20 EVIDENCE FOR THAT AND YOU CAN DISCUSS THAT.

13:06:15 21 DEPENDING ON HOW THAT COMES OUT, THEN WE  
13:06:17 22 NEED TO DISCUSS OUR FINAL JURY INSTRUCTIONS AS TO  
13:06:21 23 THOSE.

13:06:21 24 I THINK I SHARED WITH YOU THIS MORNING  
13:06:23 25 OFF THE RECORD SOME OBSERVATIONS THAT I MADE ABOUT

13:06:27 1 THE JURY INSTRUCTIONS, AND I THINK BOTH COUNSEL  
13:06:29 2 TOOK NOTE OF THOSE.

13:06:33 3 MR. O'REILLY: ACTUALLY, YOUR HONOR, IT  
13:06:35 4 WAS A FAIRLY ABBREVIATED DISCUSSION. I MUST  
13:06:37 5 CONFESS THAT I DID NOT.

13:06:39 6 THE COURT: LET ME REPEAT WHAT I -- YOU  
13:06:42 7 KNOW WHAT I'M GOING TO DO IS I'M GOING TO MAKE A  
13:06:44 8 PHOTOCOPY FOR YOU AND IT'S PROBABLY EASIER TO DO  
13:06:48 9 THAT AND I'LL PROVIDE THAT FOR YOU RIGHT NOW.

13:06:50 10 THESE ARE JUST NOTES OF ABOUT FOUR OR  
13:06:53 11 FIVE MINUTES THAT I FOUND AND I E-MAILED THIS TO  
13:06:57 12 MYSELF LAST NIGHT. SO I'LL GIVE YOU A COPY OF  
13:07:00 13 THIS, AND I THINK THAT MIGHT GIVE YOU SOME  
13:07:02 14 REFERENCE.

13:07:03 15 MR. FONG: THANK YOU.

13:07:04 16 MR. O'REILLY: ONE OTHER THING I WOULD  
13:07:05 17 LIKE SOME GUIDANCE ON IS FOR CLOSING, HOW LONG, YOU  
13:07:14 18 KNOW, CLOSING --

13:07:16 19 THE COURT: HOW MANY DAYS WOULD YOU LIKE?

13:07:18 20 MR. O'REILLY: I WOULD LIKE NO MORE  
13:07:20 21 THAN -- I'M EXPECTED TO BE 20, 25 MINUTES.

13:07:23 22 THE COURT: I'M GOING TO ASK YOUR  
13:07:24 23 ESTIMATES ABOUT THAT.

13:07:25 24 DO YOU KNOW WHAT YOUR ESTIMATE WOULD BE  
13:07:27 25 FOR CLOSING?

13:07:27 1 MR. FONG: YOUR HONOR, I WOULD SAY  
13:07:30 2 SAFELY, BECAUSE IF I OVERESTIMATE, I DON'T THINK  
13:07:33 3 ANYONE IS GOING TO FAULT ME FOR OVERESTIMATING. I  
13:07:36 4 WOULD SAY PROBABLY CLOSER TO AN HOUR. I DO NOT SEE  
13:07:41 5 A 20 MINUTE CLOSING FROM THE DEFENSE.

13:07:45 6 I'M SORRY. I DO NOT SEE A 20-MINUTE  
13:07:48 7 CLOSING FOR THE DEFENSE. I SUSPECT, YOUR HONOR, IF  
13:07:51 8 ANYTHING, IT'S GOING TO BE CLOSER TO AN HOUR.

13:07:53 9 THE COURT: MY THOUGHT INITIALLY WAS AND  
13:07:57 10 IT'S PROBABLY WOULD GENERATE A 45-MINUTE CLOSING OR  
13:08:02 11 SOMETHING LIKE THAT. THAT WAS JUST MY BEST  
13:08:05 12 ESTIMATE.

13:08:09 13 MR. O'REILLY: WHAT WE'LL TRY TO DO IS  
13:08:11 14 BREAK IT UP ON TWO-THIRDS/ONE-THIRD, AND I ASSUME  
13:08:15 15 45 MINUTES IS OUR CUMULATIVE OR OUR TOTAL.

13:08:17 16 THE COURT: RIGHT, RIGHT, RIGHT.

13:08:19 17 SO THAT'S KIND OF AN ESTIMATE FROM MY  
13:08:25 18 PART. WHEN I LOOK AT THIS I THINK 45 MINUTES IS  
13:08:28 19 ABOUT RIGHT. AND NOW THAT PROBABLY GETS CLOSE TO  
13:08:32 20 50 MINUTES OR 55 MINUTES BUT IF IT GROWS TO AN  
13:08:39 21 HOUR, WELL, OKAY. BUT THAT'S KIND OF MY ESTIMATE  
13:08:41 22 OF WHERE YOU WOULD BE. OF COURSE, I DON'T WANT TO  
13:08:43 23 UNNECESSARILY LIMIT EITHER SIDE FROM ARGUING WHAT  
13:08:48 24 THEY FEEL NEEDS TO BE PRESENTED.

13:08:51 25 AND I THINK YOU NOW HAVE MY NOTES TO



13:08:58 1 MYSELF AND OBSERVATIONS.

13:09:00 2 SO YOU CAN LOOK AT THOSE AND DIGEST  
13:09:02 3 THOSE, AND WE CAN TALK ABOUT THOSE TOMORROW  
13:09:06 4 MORNING.

13:09:06 5 THEY'RE COMING AT 8:00 O'CLOCK.

13:09:08 6 MR. O'REILLY: YES, YOUR HONOR.

13:09:09 7 MR. FONG: YES, YOUR HONOR.

13:09:10 8 THE COURT: WE'LL BE HERE AND EXPECT SOME  
13:09:12 9 OF THOSE REFRESHMENTS WILL BE HERE FOR YOU AS WELL.

13:09:15 10 ANYTHING ELSE?

13:09:16 11 MR. O'REILLY: NOTHING FURTHER.

13:09:17 12 MR. FONG: NO.

13:09:18 13 THE COURT: WE'LL SEE YOU TOMORROW  
13:09:19 14 MORNING. THANK YOU.

13:09:19 15 (WHEREUPON, THE EVENING RECESS WAS  
13:09:19 16 TAKEN.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

\_\_\_\_\_  
IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

DATED: DECEMBER 19, 2011